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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 35

LAW ENFORCEMENT OFFICERS AND AGENCIES

Chap.

CHAPTER 1

GENERAL PROVISIONS

Sec.

35-1-8. Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons.

Cross references. — Prohibition on minimum waiting periods for initiating missing person report, § 35-1-18.

35-1-9. Utilization of alarm verification required.

(a) As used in this Code section, the term:

(1) "Alarm monitoring company" means any person, company, corporation, partnership, business, or a representative or agency thereof authorized to provide alarm monitoring services for burglar alarm systems, fire alarm systems, or other similar electronic security systems whether such systems are maintained on commercial business property, public property, or individual residential property.

(2) "Alarm verification" means a reasonable attempt by an alarm monitoring company to contact the alarm site or alarm user, by telephone or other electronic means, to determine whether a burglar alarm signal is valid prior to requesting law enforcement to be dispatched to the location and, where the initial attempted contact cannot be made, a second reasonable attempt to make such contact utilizing a different telephone number or electronic address or number.

(b) Except as provided in subsection (c) of this Code section, an alarm monitoring company shall utilize a system providing for alarm verification of all alarm signals.

(c) Alarm verification shall not be required in the case of a fire alarm or a panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified to be true by video or audible means. (Code 1981, § 35-1-9, enacted by Ga. L. 2013, p. 750, § 1/HB 59.)

Effective date. — This Code section became effective July 1, 2013.

Editor's notes. — This Code section formerly pertained to the prohibition of inspecting or copying records of law enforcement agency for commercial solicitation and was based on Ga. L. 1999, p. 1868, § 1. The former Code section was repealed by Ga. L. 1999, p. 809, § 2, effective July 1, 1999.

35-1-13. Completion and transmission of reports from victims of identity fraud.

Notwithstanding any other provision of law, any law enforcement agency that receives a report from a resident of this state that such person has been the victim of identity fraud shall prepare an incident report and transmit the same to the Georgia Bureau of Investigation identity fraud repository, as provided in Code Section 16-9-123, notwithstanding the fact that such person's identity may have been used solely to commit one or more criminal offenses beyond the jurisdiction of this state. Copies of such incident reports shall be referred from the office of the Attorney General to the Georgia Crime Information Center as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been used. (Code 1981, § 35-1-13, enacted by Ga. L. 2002, p. 551, § 4; Ga. L. 2015, p. 1088, § 25/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted "Georgia Bureau of Investigation" for "Governor's Office of Consumer Affairs" in the middle of the first sentence, and substituted "office of the Attorney General" for "Governor's Office of Consumer Affairs" near the beginning of the second sentence.

35-1-18. Prohibition on minimum waiting periods for initiating missing person report.

No law enforcement agency shall implement a policy or practice which mandates a minimum waiting period before initiating a missing person report with such agency; provided, however, that it shall remain within the discretion of the law enforcement agency to determine what action, if any, is required in response to such a report. (Code 1981, § 35-1-18, enacted by Ga. L. 2014, p. 704, § 2/SB 23.)

Effective date. — This Code section became effective July 1, 2013. See editor's note for effective dates that precede Governor's approval.

Cross references. — Kidnapping, § 16-5-40. Immediate investigation for missing person with Alzheimer's disease, § 35-1-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-1-19. Disclosure of arrest booking photographs prohibited.

(a) As used in this Code section, the term "booking photograph" means a photograph or image of an individual taken by an arresting law enforcement agency for the purpose of identification or taken when such individual was processed into a jail.

(b) Except as provided in Code Section 50-18-77 and booking photographs required for publication as set forth in Titles 16 and 40, for the State Sexual Offender Registry, and for use by law enforcement agencies for administrative purposes, an arresting law enforcement agency or agent thereof shall not post booking photographs to or on a website.

(c) An arresting law enforcement agency shall not provide or make available a copy of a booking photograph in any format to a person requesting such photograph if:

(1) Such booking photograph may be placed in a publication or posted to a website or transferred to a person to be placed in a publication or posted to a website; and

(2) Removal or deletion of such booking photograph from such publication or website requires the payment of a fee or other consideration.

(d) When a person requests a booking photograph, he or she shall submit a statement affirming that the use of such photograph is in

compliance with subsection (c) of this Code section. Any person who knowingly makes a false statement in requesting a booking photograph shall be guilty of a violation of Code Section 16-10-20. (Code 1981, § 35-1-19, enacted by Ga. L. 2014, p. 742, § 1/HB 845.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

CHAPTER 2

DEPARTMENT OF PUBLIC SAFETY

Article 2

Georgia State Patrol

Sec.
35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

ARTICLE 2

GEORGIA STATE PATROL

35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

(a) Any offer to donate or convey by deed, gift, rent, lease, or other means any property, equipment, or services to the department shall be made in writing through command channels to the commissioner. If the commissioner approves the offer, he or she shall submit a written proposal of the offer to the board for its approval. A copy of the formal proposal shall be forwarded by the commissioner to the Office of Planning and Budget, the Senate Budget and Evaluation Office, and the House Budget and Research Office, any of which may comment on the proposal.

(b) Title to real property shall be in the State of Georgia for the use of the Department of Public Safety. No member of the department shall be authorized to accept any donation or conveyance of property, equipment, or services unless the provisions of this Code section have been complied with and until the board has approved the donation or conveyance. (Code 1981, § 35-2-41.1, enacted by Ga. L. 1985, p. 486, § 3; Ga. L. 2008, p. VO1, § 1-16/HB 529; Ga. L. 2014, p. 866, § 35/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" and substituted "House Budget and Research Office" for "House Budget Office" in the last sentence of subsection (a).

CHAPTER 3

GEORGIA BUREAU OF INVESTIGATION

Article 1

General Provisions

Article 2

Georgia Crime Information Center

Article 4

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Article 6A

DNA Sampling, Collection, and Analysis

Article 7

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Article 8

Alert Systems for Unapprehended Suspects

ARTICLE 1

GENERAL PROVISIONS

35-3-4. Powers and duties of bureau generally.

(a) It shall be the duty of the bureau to:

(1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements of persons in cooperation with the bureaus and departments of other states and of the United States;

(2) Exchange information relating to crime and criminals;

(3) Keep permanent files and records of such information procured or received;

(4) Provide for the scientific investigation of articles used in committing crimes or articles, fingerprints, or bloodstains found at the scene of a crime;

(5) Provide for the testing and identification of weapons and projectiles fired therefrom;

(6) Acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(7) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the bureau shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(8) Exchange such records and information as provided in paragraphs (6) and (7) of this subsection with, and for the official use of, authorized officials of the federal government, the states, cities, counties, and penal and other institutions. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies;

(9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;

(10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16, relating to offenses related to minors;

(11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;

(12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;

(13) Identify and investigate violations of Code Section 16-5-46;

(14) Identify and investigate violations of Article 8 of Chapter 5 of Title 16; and

(15)(A) Acquire, collect, analyze, and provide to the board any information which will assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties as specified in Code Section 42-1-14, including, but not limited to, obtaining:

(i) Incident, investigative, supplemental, and arrest reports from law enforcement agencies;

(ii) Records from clerks of court;

(iii) Records and information maintained by prosecuting attorneys;

(iv) Records maintained by state agencies, provided that any records provided by the State Board of Pardons and Paroles that are classified as confidential state secrets pursuant to Code Section 42-9-53 shall remain confidential and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles; and

(v) Other documents or information as requested by the board.

(B) As used in this paragraph, the term:

(i) "Board" means the Sexual Offender Registration Review Board.

(ii) "Risk assessment classification" means the level into which a sexual offender is placed based on the board's assessment.

(iii) "Sexual offender" has the same meaning as set forth in Code Section 42-1-12.

(b) In addition to the duties provided in subsection (a) of this Code section, the members of the bureau shall have and are vested with the same authority, powers, and duties as are possessed by the members of the Uniform Division of the Department of Public Safety under this title. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1974, p. 109, § 2; Ga. L. 1977, p. 752, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1984, p. 690, § 2; Ga. L. 1985, p. 149, § 35; Ga. L. 1996, p. 416, § 9; Ga. L. 2007, p. 283, § 3/SB 98; Ga. L. 2008, p. 601, § 2/SB 388; Ga. L. 2010, p. 1162, § 2/SB 371; Ga. L. 2011, p. 217, § 9/HB 200; Ga. L. 2012, p. 351, § 5/HB 1110; Ga. L. 2012, p. 985, § 1/HB 895; Ga. L. 2013, p. 524, § 3-5/HB 78; Ga. L. 2013, p. 1056, § 3/HB 122.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8 or 16-5-100" in paragraph (a)(14). The second 2013 amendment, effective July 1, 2013, added the proviso at the end of division (a)(15)(A)(iv).

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

35-3-5. Director — Creation; appointment and removal; powers and duties.

(a) There is created the position of director.

(b) The director shall be the chief administrative officer and shall be both appointed and removed by the Board of Public Safety with the approval of the Governor.

(c) The director shall coordinate and supervise the work of the Georgia Child Fatality Review Panel created by Code Section 19-15-4 or shall designate a person from within the bureau to serve as the coordinator and supervisor and shall provide such staffing and administrative support to the Georgia Child Fatality Review Panel as may be necessary to enable it to carry out its statutory duties.

(d) The director shall report the death of any child to the chairperson of the review committee, as such term is defined in Code Section 19-15-1, for the county in which such child resided at the time of death, unless the director or his or her designee has knowledge that such death has been reported by the county medical examiner or coroner, pursuant to Code Section 19-15-3, and shall provide such review committee access to any records of the bureau relating to such child.

(e) Except as otherwise provided by this chapter, and subject to the general policy established by the board, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the bureau by this chapter. (Ga. L. 1974, p. 109, § 2; Ga. L. 2005, p. 599, § 2/SB 146; Ga. L. 2014, p. 34, § 2-8/SB 365.)

The 2014 amendment, effective July 1, 2014, added subsections (c) and (d) and redesignated former subsection (c) as present subsection (e).

Editor's notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to provide for transparency relative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014).

35-3-7. Agreements by director and commissioner for provision of services and material.

Law reviews. — For article, "The Emory Law Volunteer Clinic for Veterans: Serving Those Who Served," see 19 Ga. St. B.J. 26 (Feb. 2014).

ARTICLE 2

GEORGIA CRIME INFORMATION CENTER

35-3-33. Powers and duties of center generally.

(a) The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become career criminals, well-known offenders, or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution;

(D) Are unidentified human corpses found in this state; or

(E) Are children who are charged with an offense that if committed by an adult would be a felony or are children whose cases are transferred from a juvenile court to another court for prosecution;

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is

found for a person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Periodically conduct audits of crime reporting practices of criminal justice agencies to ensure compliance with the standards of national and state uniform crime reporting systems and to ensure reporting of criminal arrests, dispositions, and custodial information;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish in print or electronically statistics, no less frequently than annually, that do not identify persons and report such information to the Governor, the General Assembly, state and local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center which will aid these agencies in the performance of their official duties. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information;

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to criminal justice agencies;

(15) Receive and process fingerprints from the Supreme Court of Georgia Office of Bar Admissions for the purpose of determining whether or not an applicant for admission to the State Bar of Georgia has a criminal record. The processing shall include submission of fingerprints to the Georgia Bureau of Investigation and the Federal

Bureau of Investigation for comparison to each of their respective files and data bases; and

(16) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Sections 15-12-40.1 and 21-2-231, without charge and in the electronic format requested.

(b) Criminal justice agencies shall furnish upon written request and without charge to any local fire department in this state a copy, processed under purpose code "E", of the criminal history record information of an applicant for employment.

(c) The provisions of this article notwithstanding, information and records of children shall only be inspected and disclosed as provided in Code Sections 15-11-702 and 15-11-708. Such records and information shall be sealed or destroyed according to the procedures outlined in Code Sections 15-11-701 and 15-11-709. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 617, § 5; Ga. L. 1980, p. 394, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 952, §§ 2, 4; Ga. L. 1984, p. 22, § 35; Ga. L. 1986, p. 513, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1998, p. 842, § 7; Ga. L. 2000, p. 20, § 21; Ga. L. 2000, p. 1549, § 1; Ga. L. 2003, p. 334, § 2; Ga. L. 2007, p. 43, § 1/SB 62; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 294, § 4-44/HB 242; Ga. L. 2014, p. 451, § 11/HB 776.)

The 2013 amendment, effective January 1, 2014, in subsection (c), substituted "Code Sections 15-11-702 and 15-11-708" for "Code Sections 15-11-82 and 15-11-83" in the first sentence, inserted "sealed or", and substituted "Code Sections 15-11-701 and 15-11-709" for "Code Sections 15-11-79.2 and 15-11-81" in the last sentence. See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, deleted "and" at the end of paragraph (a)(14); substituted "; and" for a period at the end of paragraph (a)(15); and added paragraph (a)(16).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

JUDICIAL DECISIONS

Cited in Gay v. Owens, 292 Ga. 480, 738 S.E.2d 614 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

Disclosure

Disclosure

Updating of crimes and offenses for which Georgia Crime Information Center is authorized to collect and file fingerprints. — Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. §§ 16-11-130.2, 16-11-90(b), 16-8-14.1(a), 16-8-22, and 33-24-53, are designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

Updating of crimes and offenses for which Georgia Crime Information Center is authorized to collect and file fingerprints. — Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. § 7-1-696 and O.C.G.A. § 7-1-709, are NOT at this time designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

35-3-34. Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth;

(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 35-3-37; or

(2) Make criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations.

(d.1) Reserved.

(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies

may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.3) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(d.4) The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally

incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(3)(A) The records of the center shall include information as to whether a person has been involuntarily hospitalized. In order to carry out the provisions of Code Section 16-11-129, the center shall be provided such information and no other mental health information from the records of the probate and superior courts ordering persons to be involuntarily hospitalized. With respect to probate court records, such information shall be provided in a manner agreed upon by the Probate Judges Training Council and the bureau. With respect to superior court records, such information shall be provided in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the bureau. Such records shall be provided in a manner so as to preserve the confidentiality of patients' rights in all other respects.

(B) In order to carry out the provisions of Code Section 16-11-129, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or has been found not guilty by reason of insanity at the time of the crime. The clerk of court shall report such information to the center immediately but in no case later than ten days after such adjudication of mental incompetence or finding of not guilty by reason of insanity.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 1401, § 2; Ga. L. 1977, p. 1243, § 1; Ga. L. 1978, p. 1981, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1988, p. 203, § 1; Ga. L. 1989, p. 1080, § 2; Ga. L. 1994, p. 1895, § 12; Ga. L. 1995, p. 139, § 3; Ga. L. 1995, p. 633, §§ 1, 2; Ga. L. 1996, p. 6, § 35; Ga. L. 2000, p. 1206, § 1; Ga. L. 2003, p. 840, § 1; Ga. L. 2005, p. 613, § 2/SB 175; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 812, § 4/SB 532; Ga. L. 2012, p. 899, § 6-1/HB 1176; Ga. L. 2014, p. 599, § 1-13/HB 60.)

The 2014 amendment, effective July 1, 2014, added paragraph (e)(3).

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014).

35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.

(a) Where an offender has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender's record of arrests, charges, or sentences if the offender was exonerated and discharged without a court adjudication of guilt on or after July 1, 2004, and either:

(1) The request for information is an inquiry about a person who has applied for employment with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the person who is the subject of the inquiry to the center was prosecuted for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

(2) The request for information is an inquiry about a person who has applied for employment with a long-term care facility as defined in Code Section 31-8-51 or a person or entity that offers day care for elderly persons and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, pandering, or a violation of Article 8 of Chapter 5 of Title 16; or

(3) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-1-1 or developmentally disabled as defined in Code Section 37-1-1, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering.

(b) First offender records including records of arrests, charges, or sentences may be released to any law enforcement unit and the Georgia Peace Officer Standards and Training Council where the request for information is an inquiry about a person who has applied for employment in a certified position or a person who is an applicant, candidate, or peace officer as defined in Code Section 35-8-2. (Code 1981, § 35-3-34.1, enacted by Ga. L. 2003, p. 840, § 3; Ga. L. 2006, p. 72,

§ 35/SB 465; Ga. L. 2006, p. 164, § 1/HB 1335; Ga. L. 2009, p. 453, § 3-10/HB 228; Ga. L. 2011, p. 227, § 23/SB 178; Ga. L. 2013, p. 524, § 3-6/HB 78.)

The 2013 amendment, effective July 1, 2013, in paragraph (a)(2), substituted "long-term care facility as defined in Code Section 31-8-51" for "nursing home, assisted living community, personal care home," near the middle, and substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8" near the end.

35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to center; responsibility for accuracy.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 and for persons in the categories enumerated in subparagraphs (a)(1)(B), (a)(1)(C), and (a)(1)(D) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, community supervision officers, county or department of Juvenile Justice juvenile probation officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation, full-face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of subsection (a) of Code Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order and any such dispositions must also be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If any such warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all such arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all magistrates, and all persons in charge of community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation offices shall supply the center with the information described in Code Section 35-3-33 on the basis of the forms and instructions to be supplied by the center.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the

center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the "uniform crime report" and shall contain crimes reported and otherwise processed during the period preceding the period of report, including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime. The incident/complaint report forms used by criminal justice agencies shall, when applicable, include the identification of any victim who is a student and the name of the school attended by any such student.

(j) Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of subsection (a) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law

enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

(n) Neither the center nor its employees shall be responsible for the accuracy of information contained in records representing wanted persons, missing persons, and stolen serial numbered property established in computerized files on the Georgia Criminal Justice Information System (CJIS) network or in computerized files maintained by the Federal Bureau of Investigation National Crime Information Center (NCIC). Criminal justice agencies establishing such records bear all responsibilities for entry, update, and removal as dictated by actions of criminal justice employees and officials. (Ga. L. 1973, p. 1301, § 4; Ga. L. 1976, p. 617, § 6; Ga. L. 1980, p. 396, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 149, § 35; Ga. L. 1992, p. 1022, § 1; Ga. L. 2001, p. 1024, § 1; Ga. L. 2002, p. 415, § 35; Ga. L. 2003, p. 336, § 1; Ga. L. 2003, p. 840, § 3A; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2015, p. 422, § 5-54/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "community supervision officers, county or department of Juvenile Justice juvenile probation officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42" for "parole and probation officers" near the middle of subsection (b); and substituted "community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation" for "state and county probation and parole" in the middle of subsection (g). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

35-3-37. Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.

(a) As used in this Code section, the term:

(1) "Drug court treatment program" means a treatment program operated by a drug court division in accordance with the provisions of Code Section 15-1-15.

(2) "Entity" means the arresting law enforcement agency, including county and municipal jails and detention centers.

(3) "Mental health treatment program" means a treatment program operated by a mental health court division in accordance with the provisions of Code Section 15-1-16.

(4) "Nonserious traffic offense" means any offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title 40

and any similar such offense under the laws of a state which would not be considered a serious traffic offense under the laws of this state if committed in this state.

(5) "Prosecuting attorney" means the Attorney General, a district attorney, or the solicitor-general who had jurisdiction where the criminal history record information is sought to be modified, corrected, supplemented, amended, or restricted. If the offense was a violation of a criminal law of this state which, by general law, may be tried by a municipal, magistrate, probate, or other court that is not a court of record, the term "prosecuting attorney" shall include the prosecuting officer of such court or, in the absence of such prosecuting attorney, the district attorney of the judicial circuit in which such court is located.

(6) "Restrict," "restricted," or "restriction" means that the criminal history record information of an individual relating to a particular charge shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the center and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34.

(7) "Serious violent felony" shall have the same meaning as set forth in Code Section 17-10-6.1.

(8) "State" includes any state, the United States or any district, commonwealth, territory, or insular possession of the United States, and the Trust Territory of the Pacific Islands.

(9) "Veterans treatment program" means a treatment program operated by a veterans court division in accordance with the provisions of Code Section 15-1-17.

(10) "Youthful offender" means any offender who was less than 21 years of age at the time of his or her conviction.

(b) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity of this state to invade the privacy of any citizen as defined by the General Assembly or as defined by the courts other than to the extent provided in this article.

(c) The center shall make an individual's criminal history record information available for review by such individual or his or her designee upon written application to the center.

(d) If an individual believes his or her criminal history record information to be inaccurate, incomplete, or misleading, he or she may request a criminal history record information inspection at the center.

The center at which criminal history record information is sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures or restrictions, including fingerprinting, as are reasonably necessary to assure the security of the criminal history record information, to verify the identities of those who seek to inspect such information, and to maintain an orderly and efficient mechanism for inspection of criminal history record information. The fee for inspection of criminal history record information shall not exceed $15.00, which shall not include the cost of the fingerprinting.

(e) If the criminal history record information is believed to be inaccurate, incomplete, or misleading, the individual may request that the entity having custody or control of the challenged information modify, correct, supplement, or amend the information and notify the center of such changes within 60 days of such request. In the case of county and municipal jails and detention centers, such notice to the center shall not be required. If the entity declines to act within 60 days of such request or if the individual believes the entity's decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.

(f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order from the court with original jurisdiction of the criminal charges that the subject information be modified, corrected, supplemented, or amended by the entity with custody of such information. Notice of the appeal shall be provided to the entity and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the entity having custody or control of the disputed criminal history record information. The court shall conduct a de novo review and, if requested by a party, the proceedings shall be recorded.

(g)(1) Should the court find by a preponderance of the evidence that the criminal history record information in question is inaccurate, incomplete, or misleading, the court shall order such information to be appropriately modified, corrected, supplemented, or amended as the court deems appropriate. Any entity with custody, possession, or control of any such criminal history record information shall cause each and every copy thereof in its custody, possession, or control to be altered in accordance with the court's order within 60 days of the entry of the order.

(2) To the extent that it is known by the requesting individual that an entity has previously disseminated inaccurate, incomplete, or misleading criminal history record information, he or she shall, by

written request, provide to the entity the name of the individual, agency, or company to which such information was disseminated. Within 60 days of the written request, the entity shall disseminate the modification, correction, supplement, or amendment to the individual's criminal history record information to such individual, agency, or company to which the information in question has been previously communicated, as well as to the individual whose information has been ordered so altered.

(h) Access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:

(1) Prior to indictment, accusation, or other charging instrument:

(A) The case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:

(i) The offense against such individual is closed by the arresting law enforcement agency. It shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division. A copy of the notice shall be sent to the accused and the accused's attorney, if any, by mailing the same by first-class mail; or

(ii) The center does not receive notice from the arresting law enforcement agency that the offense has been referred to the prosecuting attorney or transferred to another law enforcement or prosecutorial agency of this state, any other state or a foreign nation, or any political subdivision thereof for prosecution and the following period of time has elapsed from the date of the arrest of such individual:

(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated nature, two years;

(II) If the offense is a felony, other than a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, four years; or

(III) If the offense is a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with Code Section 35-3-34.

(B) The case was referred to the prosecuting attorney but was later dismissed; or

(C) The grand jury returned two no bills; and

(2) After indictment or accusation:

(A) Except as provided in subsection (i) of this Code section, all charges were dismissed or nolle prossed;

(B) The individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation;

(C) The individual successfully completed a drug court treatment program, mental health treatment program, or veterans treatment program, the individual's case has been dismissed or nolle prossed, and he or she has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense; or

(D) The individual was acquitted of all of the charges by a judge or jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history record information being publicly available because either:

(i) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine; or

(ii) The individual has been formally charged with the same or similar offense within the previous five years.

(i) After the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:

(1) The charges were nolle prossed or otherwise dismissed because:

(A) Of a plea agreement resulting in a conviction of the individual for an offense arising out of the same underlying transaction or occurrence as the conviction;

(B) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine;

(C) The conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of the state or a foreign nation; or

(D) The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution;

(2) The charges were tried and some but not all of the charges resulted in an acquittal; or

(3) The individual was acquitted of all charges but it is later determined that the acquittal was the result of jury tampering or judicial misconduct.

(j)(1) When an individual had a felony charge dismissed or nolle prossed or was found not guilty of such charge but was convicted of a misdemeanor offense that was not a lesser included offense of the felony charge, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for the felony charge within four years of the arrest. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case,

and the public's interest in the criminal history record information being publicly available.

(3) When an individual's case has remained on the dead docket for more than 12 months, such individual may petition the superior court in the county where the case is pending to restrict access to criminal history record information for such offense. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the case was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his or her sentence, has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the individual's conduct and the public's interest in the criminal history record information being publicly available.

(B) Record restriction shall not be appropriate if the individual was convicted of:

(i) Child molestation in violation of Code Section 16-6-4;

(ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(iii) Sexual assault by persons with supervisory or disciplinary authority in violation of Code Section 16-6-5.1;

(iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

(v) Pimping in violation of Code Section 16-6-11;

(vi) Pandering by compulsion in violation of Code Section 16-6-14;

(vii) Masturbation for hire in violation of Code Section 16-6-16;

(viii) Giving massages in a place used for lewdness, prostitution, assignation, or masturbation for hire in violation of Code Section 16-6-17;

(ix) Sexual battery in violation of Code Section 16-6-22.1;

(x) Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16;

(xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or

(xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

(5) Any party may file an appeal of an order entered pursuant to this subsection as provided in Code Section 5-6-34.

(k)(1) The center shall notify the arresting law enforcement agency of any criminal history record information, access to which has been restricted pursuant to this Code section, within 30 days of the date access to such information is restricted. Upon receipt of notice from the center that access to criminal history record information has been restricted, the arresting law enforcement agency or other law enforcement agency shall, within 30 days, restrict access to all such information maintained by such arresting law enforcement agency or other law enforcement agency for such individual's charge.

(2) An individual who has had criminal history record information restricted pursuant to this Code section may submit a written request to the appropriate county or municipal jail or detention center to have all records for such individual's charge maintained by the appropriate county or municipal jail or detention center restricted. Within 30 days of such request, the appropriate county or municipal jail or detention center shall restrict access to all such criminal history record information maintained by such appropriate county or municipal jail or detention center for such individual's charge.

(3) The center shall be authorized to unrestrict criminal history record information based on the receipt of a disposition report

showing that the individual was convicted of an offense arising out of an arrest of which the information was restricted pursuant to this Code section.

(l) If criminal history record information is restricted pursuant to this Code section and if the entity declines to restrict access to such information, the individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the entity shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in subsection (h) or (j) of this Code section.

(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to this Code section may petition the court with original jurisdiction over the charges in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charge. Notice of such petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

(2) The court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the court finds by a preponderance of the evidence that:

(A) The criminal history record information has been restricted pursuant to this Code section; and

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

(4) The person who is the subject of such sealed criminal history record information may petition the court for inspection of the criminal history record information included in the court order. Such information shall always be available for inspection, copying, and use by criminal justice agencies and the Judicial Qualifications Commission.

(n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal

history record information of an arrest, including any fingerprints or photographs taken in conjunction with such arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the center for the actual costs of restricting such records, provided that such fee shall not exceed $50.00.

(2) Within 30 days of receipt of such written request, the arresting law enforcement agency shall provide a copy of the request to the prosecuting attorney. Within 90 days of receiving the request, the prosecuting attorney shall review the request to determine if the request meets the criteria set forth in subsection (h) of this Code section for record restriction, and the prosecuting attorney shall notify the arresting law enforcement agency of his or her decision within such 90 day period. If the prosecuting attorney denies such request, he or she shall cite with specificity the reason for such denial in writing and attach to such denial any relevant documentation in his or her possession used to make such denial. There shall be a presumption that the prosecuting attorney does not object to the request to restrict the criminal history record information if he or she fails to respond to the request for a determination within the 90 day period set forth in this paragraph. The arresting law enforcement agency shall inform the individual of the prosecuting attorney's decision, and, if record restriction is approved by the prosecuting attorney, the arresting law enforcement agency shall restrict the criminal history record information within 30 days of receipt of the prosecuting attorney's decision.

(3) If a prosecuting attorney declines an individual's request to restrict access to criminal history record information, such individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the prosecuting attorney to decline a request to restrict access to criminal history record information shall be upheld unless the individual demonstrates by clear and convincing evidence that the arrest is eligible for record restriction pursuant to subsection (h) of this Code section and the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(4) To restrict criminal history record information at the center, an individual shall submit a prosecuting attorney's approved record restriction request or a court order issued pursuant to paragraph (3) of this subsection to the center. The center shall restrict access to such criminal history record information within 30 days of receiving such information.

(o) Nothing in this Code section shall give rise to any right which may be asserted as a defense to a criminal prosecution or serve as the basis for any motion that may be filed in any criminal proceeding. The modification, correction, supplementation, amendment, or restriction of criminal history record information shall not abate or serve as the basis for the reversal of any criminal conviction.

(p) Any application to the center for access to or restriction of criminal history record information made pursuant to this Code section shall be made in writing on a form approved by the center. The center shall be authorized to develop and publish such procedures as may be necessary to carry out the provisions of this Code section. In adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply.

(q) It shall be the duty of the entity to take such action as may be reasonable to prevent disclosure of information to the public which would identify any individual whose criminal history record information is restricted pursuant to this Code section.

(r) If the center has notified a firearms dealer that an individual is prohibited from purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title 16 and if the prohibition is the result of such individual being involuntarily hospitalized within the immediately preceding five years, upon such individual or his or her attorney making an application to inspect his or her records, the center shall provide the record of involuntary hospitalization and also inform the individual or attorney of his or her right to a hearing before the judge of the probate court or superior court relative to such individual's eligibility to possess or transport a handgun. (Code 1981, § 35-3-37, enacted by Ga. L. 2012, p. 899, § 6-2/HB 1176; Ga. L. 2013, p. 222, § 14/HB 349; Ga. L. 2014, p. 79, § 3/SB 320; Ga. L. 2014, p. 404, § 2-2/SB 382.)

The 2013 amendment, effective July 1, 2013, in paragraph (j)(1), substituted the present provisions of the first sentence for the former provisions, which read: "When an individual had felony charges dismissed or nolle prossed or was found not guilty of felony charges but was convicted of a misdemeanor offense or offenses arising out of the same underlying transaction or occurrence, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for such felony charges within four years of the arrest.", and, near the end of the last sentence, substituted "that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available" for "the charges in question did not arise out of the same underlying transaction or occurrence"; in paragraph (n)(1), substituted "Except as provided in subsection (j) of this Code section, as" for "As" at the beginning of the first sentence; in paragraph (n)(2), in the second sentence, substituted "the request meets the criteria set forth in subsection (h) of this Code section for" for "he or she agrees to", and added the third and fourth sentences; in paragraph (n)(3), substituted the present

provisions of the third sentence for the former provisions, which read: "A decision of the prosecuting attorney shall not be upheld if it is determined by clear and convincing evidence that the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available"; and, in paragraph (n)(4), substituted "of receiving" for "from receiving" in the last sentence. See editor's note for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, added present paragraph (a)(9); redesignated former paragraph (a)(9) as present paragraph (a)(10); and, near the middle of subparagraph (h)(2)(C), substituted a comma for "or" following "drug court treatment program" and inserted "or veterans treatment program,". The second 2014 amendment, effective July 1, 2014, substituted "shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable" for "shoplifting in violation of Code Section 16-8-14" in division (j)(4)(B)(xi).

Editor's notes. — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides that: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013). For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014).

JUDICIAL DECISIONS

Expungement not supported. — Former defendant's petition under O.C.G.A. § 35-3-37(j)(2) to expunge the defendant's record was denied; because the defendant had been tried twice already, and the child molestation victim and similar crimes witnesses did not wish to go through a third trial, the prosecutor decided not to press the charges after a reversal for ineffective assistance of counsel. Gibbs v. Bright, 330 Ga. App. 851, 769 S.E.2d 590 (2015).

Cited in Sosniak v. State, 292 Ga. 35, 734 S.E.2d 362 (2012).

RESEARCH REFERENCES

ALR. — Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 ALR6th 1.

Judicial expunction of criminal record of

convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 ALR6th 1.

35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.

Law reviews. — For note, "Just You and Me and Netflix Makes Three: Implications for Allowing 'Frictionless Sharing' of Personally Identifiable Information under the Video Privacy Protection Act," see 20 J. Intell. Prop. L. 413 (2013).

ARTICLE 4

MISSING CHILDREN INFORMATION CENTER

35-3-83. Missing child reports.

Upon the filing of a police report by the parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child that a child is missing, the local law enforcement agency receiving such report shall notify all of its on-duty law enforcement officers of the existence of the missing child report, communicate the report to all other law enforcement agencies having jurisdiction in the county and all law enforcement agencies of jurisdictions geographically adjoining that of the local law enforcement agency, and transmit the report to the Missing Children Information Center. (Code 1981, § 35-3-83, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2014, p. 481, § 1/SB 358.)

The 2014 amendment, effective July 1, 2014, substituted "parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child" for "parent or guardian".

ARTICLE 6A

DNA SAMPLING, COLLECTION, AND ANALYSIS

35-3-163. Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the

characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecutor or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation where the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except upon conviction as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the convicted felon whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a postconviction proceeding, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare a DNA profile which has been generated by the accused through an independent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base composed of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the

bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state. (Code 1981, § 35-3-163, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80; Ga. L. 2013, p. 141, § 35/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "composed of DNA" for "comprised of DNA" in the first sentence of subsection (e).

35-3-165. Expungement of profile in data bank upon reversal and dismissal of conviction.

RESEARCH REFERENCES

ALR. — Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 ALR6th 1.

ARTICLE 7

STATE-WIDE ALERT SYSTEM FOR MISSING DISABLED ADULTS

35-3-170. Short title.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-171. Definitions.

As used in this article, the term:

(1) "Alert system" means the state-wide "Mattie's Call" alert system for missing disabled adults and medically endangered persons.

(2) "Disabled adult" means an adult who is developmentally impaired or who suffers from dementia or some other cognitive impairment.

(3) "Local law enforcement agency" means a law enforcement agency with jurisdiction over the investigation of a missing disabled adult or other medically endangered person.

(4) "Medically endangered person" means a person with a known medical condition that might reasonably cause such person to become incapacitated or that may result in life-threatening physiological conditions likely to lead to serious bodily injury or death if not immediately treated. (Code 1981, § 38-3-111, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-171, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, added "and medically endangered persons" to the end of paragraph (1); in paragraph (3), deleted "local" following "means a" near the beginning and added "or other medically endangered persons" at the end; and added paragraph (4). See editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-172. Development and implementation of state-wide alert system for disabled adults and medically endangered persons.

(a) With the cooperation of the office of the Governor, the Georgia Lottery Corporation, and other appropriate law enforcement agencies in this state, the bureau shall develop and implement a state-wide alert system to be activated on behalf of missing disabled adults and medically endangered persons.

(b) Activation of a state-wide missing person alert system shall not prevent or prohibit any other state or local law enforcement agency from taking additional measures in response to the receipt of a missing person report. (Code 1981, § 38-3-112, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-172, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); in subsection (a), added "and medically endangered persons" at the end; and added subsection (b). See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-173. Director to be state-wide coordinator for alert system.

(a) The director is the state-wide coordinator of the alert system.

(b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives shall include instructions on the procedures for activating and deactivating the alert system.

(c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

(d) No rule or directive adopted by the director shall mandate a minimum waiting period before the alert system may be activated or a request by local law enforcement agencies may be submitted to the bureau; provided, however, that it shall remain within the discretion of the director, as provided in this article, whether the alert system shall be activated at the request of a local law enforcement agency.

(e) When making a determination whether to activate or whether to request the activation of a state-wide missing person alert system, both the director and the requesting local law enforcement agency shall take into consideration the known medical condition of the missing person if the medical condition may reasonably be considered a cause for the inability to locate such missing person. In so considering the medical condition of a missing person, particularly if such condition may be immediately life-threatening or incapacitating, the director or other authorized person and the requesting law enforcement official shall be authorized, within his or her discretion, to initiate and request, respectively, a state-wide endangered person advisory. (Code 1981, § 38-3-113, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-173, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, added subsections (d) and (e). See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code

section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-176. Criteria for activating alert system.

(a) On notification by a local law enforcement agency that a disabled adult or medically endangered person is missing, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a disabled adult or medically endangered person is missing;

(2) A local law enforcement agency believes that the disabled adult or medically endangered person is in immediate danger of serious bodily injury or death;

(3) A local law enforcement agency confirms that an investigation has taken place that verifies the disappearance and eliminates alternative explanations for the disabled adult's or medically endangered person's disappearance; and

(4) Sufficient information is available to disseminate to the public that could assist in locating the disabled adult or medically endangered person.

(b) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the disabled adult or medically endangered person did not leave a certain geographic location.

(c) The bureau may modify the criteria described by subsection (a) of this Code section as necessary for the proper implementation of the alert system. (Code 1981, § 38-3-115, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-176, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, inserted "or medically endangered person" throughout this Code section. See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-177. Verification that criteria for activation have been met.

Before requesting activation of the alert system, a law enforcement agency shall verify that the criteria described by subsection (a) of Code Section 35-3-176 have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert, based on the nature of the disabled adult or medically endangered person and the circumstances surrounding the disappearance. On verification of the criteria, the law enforcement agency shall immediately contact the bureau to request activation and shall supply the necessary information on the forms prescribed by the director. (Code 1981, § 38-3-116, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-177, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, deleted "local" preceding "law enforcement" three times throughout the Code section and inserted "or medically endangered person" in the second sentence. See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-179. Termination of alert system with respect to particular disabled adult or medically endangered person.

The director shall terminate any activation of the alert system with respect to a particular disabled adult or medically endangered person if:

(1) The person is located or the disappearance is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating and recovering the disabled adult or medically endangered person. (Code 1981, § 38-3-118, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-179, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, inserted "or medically endangered person" twice in this Code section and substituted "person" for "adult" in paragraph (1). See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-180. Immunity from civil damages for dissemination of alert information.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date

provisions that precede the date of approval by the Governor.

ARTICLE 8

ALERT SYSTEMS FOR UNAPPREHENDED SUSPECTS

35-3-190. State-wide alert system for unapprehended murder or rape suspects determined to be serious public threats.

(a) There is established a state-wide alert system known as "Kimberly's Call."

(b) As used in this article, the term "local law enforcement agency" means a local law enforcement agency with jurisdiction over the search for a suspect in a case of murder or rape.

(c) The director shall develop and implement a state-wide alert system to be activated when a suspect for the crime of murder, felony murder, or murder in the second degree as defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Kimberly's Call" as set forth in this Code section.

(e) On notification by a local law enforcement agency that a suspect in a case of murder or rape has not been apprehended and may be a serious threat to the public, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a suspect has not been apprehended;

(2) A local law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

(f) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(g) Before requesting activation of the alert system, a local law enforcement agency must verify that the criteria described by subsection (e) of this Code section have been satisfied. The local law enforcement agency shall assess the appropriate boundaries of the alert based

on the nature of the suspect and the circumstances surrounding the crime.

(h) The director shall terminate any activation of the alert system with respect to a particular suspect if:

(1) The suspect is located or the incident is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating the suspect.

(i) Any entity or individual participating in the "Kimberly's Call" alert system pursuant to this Code section shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Kimberly's Call" alert system. (Code 1981, § 38-3-120, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 38-3-130, as redesignated by Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-190, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 444, § 2-10/HB 271.)

The 2014 amendment, effective July 1, 2014, substituted "murder, felony murder, or murder in the second degree" for "murder" in the middle of subsection (c).

CHAPTER 6A

CRIMINAL JUSTICE COORDINATING COUNCIL

35-6A-3. Membership; vacancies; membership not bar to holding public office.

(a) The Criminal Justice Coordinating Council shall consist of 25 members and shall be composed as follows:

(1) The chairperson of the Georgia Peace Officer Standards and Training Council, the director of homeland security, the chairperson of the Judicial Council of Georgia, the chairperson of the Council of Accountability Court Judges of Georgia, the chairperson of the Prosecuting Attorneys' Council of the State of Georgia, the commissioner of corrections, the chairperson of the Board of Corrections, the commissioner of community supervision, the chairperson of the Board of Community Supervision, the vice chairperson of the Board

of Public Safety, the chairperson of the State Board of Pardons and Paroles, the State School Superintendent, the commissioner of community affairs, the president of the Council of Juvenile Court Judges, the chairperson of the Georgia Public Defender Council, the chairperson of the Governor's Office for Children and Families, and the commissioner of juvenile justice or their designees shall be ex officio members of the council, as full voting members of the council by reason of their office; and

(2) Ten members shall be appointed by the Governor for terms of four years, their initial appointments, however, being four for four-year terms, two for three-year terms, and four for two-year terms. Appointments shall be made so that there are always on the council the following persons: one county sheriff, one chief of police, one mayor, one county commissioner, one superior court judge, four individuals who shall be, by virtue of their training or experience, knowledgeable in the operations of the criminal justice system of this state, and one individual who shall be, by virtue of his or her training and experience, knowledgeable in the operations of the entire spectrum of crime victim assistance programs delivering services to victims of crime. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all 19 original members shall begin July 1, 1981. The initial term for the member added in 1985 shall begin July 1, 1985. The initial term for the member added in 1988 shall begin July 1, 1988. The initial term for the member added in 1989 shall begin July 1, 1989. The State School Superintendent shall be a member effective on July 1, 1989. The chairperson of the Georgia Public Defender Council shall become a member on December 31, 2003. The chairperson of the Council of Accountability Court Judges of Georgia shall become a member on July 1, 2015.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership. (Ga. L. 1981, p. 1306, § 3; Ga. L. 1983, p. 518, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 544, § 5; Ga. L. 1988, p. 242, § 1; Ga. L. 1989, p. 288, § 1; Ga. L. 1989, p. 1245, § 1; Ga. L. 1990, p. 8, § 35; Ga. L. 1991, p. 435, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 417, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 1998, p. 128, § 35; Ga. L. 2003, p. 191, § 8; Ga. L. 2004, p. 988, § 1; Ga. L. 2008, p. 568, § 11/HB 1054; Ga. L. 2015, p. 422, § 5-55/HB 310; Ga. L. 2015, p. 519, § 8-8/HB 328.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, substituted "26 members" for "24 members" in the middle of subsection (a); and inserted "the commissioner of community supervision, the chairperson of the Board of Community Supervision," in the middle of paragraph (a)(1). See editor's note for applicability. The second 2015 amendment, effective July 1, 2015, substituted "Georgia Public Defender Council" for "Georgia Public Defender Standards Council" near the middle of paragraph (a)(1) and in the next to the last sentence of subsection (c); substituted "25 members" for "24 members" near the middle of subsection (a); inserted "the chairperson of the Council of Accountability Court Judges of Georgia," near the beginning of paragraph (a)(1); and added the last sentence in subsection (c). See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2015, the amendment of the introductory language of subsection (a) of this Code section by Ga. L. 2015, p. 422, § 5-55/HB 310, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 519, § 8-8/HB 328, due to irreconcilable conflict.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

35-6A-7. Functions and authority of council.

The council is vested with the following functions and authority:

(1) To cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(2) To prepare, publish in print or electronically, and disseminate fundamental criminal justice information of a descriptive and analytical nature to all components of the criminal justice system of this state, including law enforcement agencies, the courts, juvenile justice agencies, and correctional agencies;

(3) To serve as the state-wide clearing-house for criminal justice information and research;

(4) To maintain a research program in order to identify and define significant criminal justice problems and issues and effective solutions and to publish in print or electronically special reports as needed;

(5) In coordination and cooperation with all components of the criminal justice system of this state, to develop criminal justice legislative proposals and executive policy proposals reflective of the priorities of the entire criminal justice system of this state;

(6) To serve in an advisory capacity to the Governor on issues impacting the criminal justice system of this state;

(7) To coordinate high visibility criminal justice research projects and studies with a state-wide impact, which studies and projects cross traditional system component lines;

(8) To convene periodically state-wide criminal justice conferences involving key executives in the criminal justice system of this state and elected officials for the purpose of developing, prioritizing, and publicizing a policy agenda for the criminal justice system of this state;

(9) To provide for the interaction, communication, and coordination of all components of the criminal justice system of this state for the purpose of improving this state's response to crime and its effects;

(10) To administer gifts, grants, and donations for the purpose of carrying out this chapter;

(11) To promulgate rules governing the approval of victim assistance programs as provided for in Article 8 of Chapter 21 of Title 15;

(12) To supervise the preparation, administration, and implementation of the three-year juvenile justice plan as provided by this chapter; and

(13) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Ga. L. 1981, p. 1306, § 7; Ga. L. 1995, p. 260, § 4; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 875, § 2/SB 173; Ga. L. 2015, p. 890, § 1/HB 263.)

The 2015 amendment, effective July 1, 2015, inserted "juvenile justice agencies," near the end of paragraph (2); deleted "and" at the end of paragraph (11); added paragraph (12); and redesignated former paragraph (12) as present paragraph (13).

35-6A-11. Advisory board created; membership.

(a) There is established an advisory board to the council which shall consist of at least 15 and not more than 33 members appointed by the Governor who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency, the administration of juvenile justice, or the reduction of juvenile delinquency and shall be composed of:

(1) At least three members of the council, two of whom are not full-time government employees or elected officials;

(2) At least one locally elected official representing general purpose local government;

(3) Representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecuting attorneys, attorneys for children and youth, and probation workers;

(4) Representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

(5) Representatives of private nonprofit organizations, including individuals with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

(6) Volunteers who work with delinquent children or potential delinquent children;

(7) Youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities;

(8) Individuals with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

(9) Individuals with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence.

(b)(1) A majority of the members of the advisory board, including the chairperson, shall not be full-time employees of the federal, state, or local government.

(2) At least one-fifth of the members of the advisory board shall be under 24 years of age at the time of their appointment.

(3) At least three members shall have been or shall currently be under the jurisdiction of the juvenile justice system of this state.

(c) Membership on the advisory board shall not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The advisory board shall elect a chairperson from among its membership who must also be a member of the council. The advisory board may elect such other officers and committees as it considers appropriate.

(e) Members of the advisory board shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the advisory board, in compliance with this state's travel rules and regula-

tions. However, in no case shall a member of the advisory board be reimbursed for expenses incurred in the member's capacity as the representative of another state agency. (Code 1981, § 35-6A-11, enacted by Ga. L. 2015, p. 890, § 2/HB 263.)

Effective date. — This Code section became effective July 1, 2015.

35-6A-12. Role of the advisory board.

The advisory board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The advisory board shall also meet on the call of the chairperson, the director of the council, the chairperson of the council, or the Governor;

(2) Maintain minutes of its meetings;

(3) Participate in the development and review of this state's juvenile justice plan prior to submission to the council for final action;

(4) Be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory board, on all juvenile justice and delinquency prevention grant applications submitted to the council;

(5) Using the combined expertise and experience of its members, provide regular advice and counsel to the director of the council to enable the council to carry out its statutory duties under this article; and

(6) Carry out such duties that may be required by federal law or regulation so as to enable this state to receive and disburse federal funds for juvenile delinquency prevention and treatment. (Code 1981, § 35-6A-12, enacted by Ga. L. 2015, p. 890, § 2/HB 263.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 8

EMPLOYMENT AND TRAINING OF PEACE OFFICERS

35-8-1. Short title.

JUDICIAL DECISIONS

College campus police officers did not qualify for immunity. — Campus police officers employed by a private college did not qualify as a state officer or employee who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).

Reversing reinstatement of officer on basis not raised before administrative body. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

Cited in State v. Hartsfield, 318 Ga. App. 692, 734 S.E.2d 513 (2012).

35-8-2. Definitions.

As used in this chapter, the term:

(1) "Applicant" means a prospective peace officer who has not commenced employment or service with a law enforcement unit.

(2) "Candidate" means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.

(3) "Council" means the Georgia Peace Officer Standards and Training Council.

(4) "Department head" means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement

unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor-general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(4.1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) "Emergency peace officers" means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.1) "Jail officer" means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) "Juvenile correctional facility" means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) "Juvenile correctional officer" means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) "Law enforcement support personnel" means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions directly related to the prevention, detection, or investigation of crime.

(7) "Law enforcement unit" means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department or institutions, and the office or section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services; and

(C) The Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department, board, or institutions.

(8) "Peace officer" means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, the supervision of delinquent children in the department's institutions, facilities, or programs, or the supervision of delinquent children under intensive supervision in the community;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative, regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(9) "Retired peace officer" means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section. A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) "School" means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(11) "Speed detection device" means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar," any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name "radar," or any similar device, including but not limited to laser, operating under the same or similar principle, which device is approved by the Department of Public Safety for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser. (Ga. L. 1970, p. 208, §§ 2, 14; Ga. L. 1975, p. 1165, §§ 2, 3, 10; Ga. L. 1976, p. 395, §§ 1-5; Ga. L. 1978, p. 992, §§ 1, 2; Ga. L. 1978, p. 2299, § 1; Ga. L. 1980, p. 979, § 1; Ga. L. 1981, p. 778, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 1, 2, 5, 6; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 1141, § 1; Ga. L. 1989, p. 568, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993, p. 966, §§ 1, 2; Ga. L. 1995, p. 880, § 1; Ga. L. 1995, p. 1238, § 1; Ga. L. 1996, p. 1281, § 1; Ga. L. 1997, p. 582, §§ 1, 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 1997, p. 1488, §§ 2A, 2B, 7A, 7B; Ga. L. 1998, p. 128, § 35; Ga. L. 1998, p. 224, § 2; Ga. L. 1999, p.

777, §§ 2, 3; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2013, p. 294, § 4-45/HB 242; Ga. L. 2014, p. 382, § 1/SB 324; Ga. L. 2015, p. 422, § 5-56/HB 310.)

The 2013 amendment, effective January 1, 2014, in subparagraphs (7)(B) and (8)(B), substituted "delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services" for "unruly and delinquent children"; substituted "such department" for "said department" near the middle of subparagraph (7)(B); and deleted "and unruly" following "delinquent" near the end of subparagraph (8)(B.1). See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, deleted "or" following "of crime," and "added , or the supervision of delinquent children under intensive supervision in the community" to the end of subparagraph (8)(B.1).

The 2015 amendment, effective July 1, 2015, inserted "the Department of Community Supervision," near the beginning of subparagraphs (7)(C) and (8)(C), and substituted "such department" for "said department" near the end of subparagraph (7)(C). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

JUDICIAL DECISIONS

Court lacked subject matter jurisdiction. — Trial court erred by entering a default judgment against a police officer for failing to timely answer because the officer was immune from suit on the claim brought under state law, thus, the default judgment entered on that claim was a nullity and the trial court lacked subject matter jurisdiction and should have dismissed the state law cause of action for lack of subject matter jurisdiction. Ferrell v. Young, 323 Ga. App. 338, 746 S.E.2d 167 (2013).

Discretionary authority. — With respect to law enforcement officers claiming qualified immunity in a case alleging that certain searches violated Fourth Amendment rights, the officers could show that the officers were acting within the officers' discretionary authority because it is clear that performing searches and assisting in arrests are legitimate job-related functions within the power of law enforcement bodies under O.C.G.A. § 35-8-2(8)(A). Mehta v. Foskey, No. 510-001, 2012 U.S. Dist. LEXIS 91009 (S.D. Ga. June 29, 2012).

35-8-3. Establishment of Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to Department of Public Safety.

(a) The Georgia Peace Officer Standards and Training Council is established. The council shall consist of 20 voting members and five advisory members.

(b) The voting members shall consist of:

(1) An appointee of the Governor who is not the Attorney General, the commissioner of public safety or his or her designee, the director of investigation of the Georgia Bureau of Investigation or his or her designee, the president of the Georgia Association of Chiefs of Police or his or her designee, the president of the Georgia Sheriffs Association or his or her designee, the president of the Georgia Municipal Association or his or her designee, the president of the Association County Commissioners of Georgia or his or her designee, the president of the Peace Officers' Association of Georgia or his or her designee, the commissioner of corrections or his or her designee, the commissioner of community supervision or his or her designee, the chairperson of the State Board of Pardons and Paroles or his or her designee, and the president of the Georgia Prison Wardens Association or his or her designee, who shall be ex officio members of the council;

(2) Six members who shall be appointed by the Governor for terms of four years, their initial appointments, however, being two for four-year terms, two for three-year terms, and two for two-year terms. Appointments shall be made so that there are always on the council the following persons who are appointed by the Governor: one chief of police; two municipal police officers other than a chief of police; one county sheriff; one city manager or mayor; and one county commissioner. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term. Any member may be appointed for additional terms; and

(3) Two members who are peace officers and who shall be appointed by the Governor for terms of four years. Neither person shall serve beyond the time he or she is actively employed or serves as a peace officer. Vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) Five advisory members shall be appointed by the council to serve on the council in an advisory capacity only without voting privileges.

(d) Membership on the council does not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The council is assigned to the Department of Public Safety for administrative purposes only, as prescribed in Code Section 50-4-3. (Ga. L. 1970, p. 208, § 3; Ga. L. 1972, p. 866, § 1; Ga. L. 1972, p. 1015,

§ 1606; Ga. L. 1975, p. 1165, § 1; Ga. L. 1976, p. 395, § 6; Ga. L. 1976, p. 1684, §§ 1, 2; Ga. L. 1977, p. 717, §§ 2-4; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 3, 7, 8; Ga. L. 1983, p. 3, § 26; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1997, p. 1488, § 3; Ga. L. 2015, p. 422, § 5-57/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "20 voting members" for "19 voting members" near the end of subsection (a); and inserted "the commissioner of community supervision or his or her designee," near the end of paragraph (b)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

35-8-7. Powers and duties of council generally.

JUDICIAL DECISIONS

Failure to complete training did not create 42 U.S.C. § 1983 liability. — In a 42 U.S.C. § 1983 action, an inquiry into whether a police officer lost the officer's police powers by not completing required training had no bearing on the analysis of whether the officer unlawfully arrested the decedent or used excessive force as a violation of Georgia law governing required police training did not impact the Fourth Amendment violation inquiry. Williams v. Deal, No. 311-061, 2014 U.S. Dist. LEXIS 114635 (S.D. Ga. Aug. 18, 2014).

Cited in State v. Hartsfield, 318 Ga. App. 692, 734 S.E.2d 513 (2012).

35-8-7.1. Authority of council to refuse certificate to applicant or to discipline council certified officer or exempt officer; grounds; restoration of certificate; emergency suspension of certification; notice of investigation.

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a council certified officer or exempt officer under this chapter or any antecedent law upon a determination by the council that the applicant, council certified officer, or exempt officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of the council. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the council that he or she meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being an officer or in any document connected therewith or practiced fraud or deceit or intentionally made any false statement in obtaining a certificate to practice as an officer;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this

paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. However, the council may not deny a certificate to an applicant with a conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction. The conviction of a crime involving moral turpitude shall be conclusive of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection;

(5) Had his or her certificate or license to practice as an officer revoked, suspended, or annulled by any lawful certifying or licensing authority; had other disciplinary action taken against him or her by any lawful certifying or licensing authority; or was denied a certificate or license by any lawful certifying or licensing authority;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public; such conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer;

(7) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the council, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer;

(8) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state;

(10) Become unable to perform as an officer with reasonable skill and safety to citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the officer's employing law enforcement unit for disciplinary reasons.

(b)(1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the officer's completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or officer but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the officer on probation, which may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to an officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of an officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its authority to discipline any officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

(e) Upon initiating an investigation of an officer for possible disciplinary action or upon disciplining an officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such officer of the investigation or disciplinary action. In

the case of an investigation, it shall be sufficient to identify the officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the investigation is completed without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final. Such notice shall be sent by priority mail.

(f) If the certification of an officer is suspended or revoked by either the executive director or council, then the council shall notify the head of the law enforcement agency that employs the officer; the district attorney of the judicial circuit in which such law enforcement agency is located; and the solicitor of the state court, if any, of the county in which such law enforcement agency is located. It shall be sufficient for this notice to identify the officer and state the length of time, if known, that the officer will not have powers of arrest. Such notice shall be sent by priority mail. (Code 1981, § 35-8-7.1, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 2008, p. 237, § 1/SB 373; Ga. L. 2011, p. 506, § 1/HB 203; Ga. L. 2013, p. 864, § 1/HB 366.)

The 2013 amendment, effective July 1, 2013, throughout this Code section, substituted "an officer" for "a peace officer", deleted "peace" preceding "officer", and deleted "peace" preceding "officer's"; in the introductory paragraph of subsection (a), substituted "council certified officer or exempt officer" for "certified peace officer or exempt peace officer" near the middle, and substituted "applicant, council certified officer, or exempt officer" for "applicant or certified peace officer or exempt peace officer" near the end; inserted "or she" in the second sentence of paragraph (a)(1); in paragraph (a)(5), inserted "or her" twice, and deleted "or" preceding "had other disciplinary"; substituted "public; such conduct" for "public, which conduct" in the first sentence of paragraph (a)(6); substituted "punishable, so long as such law" for "punishable, which law" in paragraph (a)(7); and deleted "probation" preceding "may be vacated" near the middle of paragraph (b)(2).

35-8-7.2. Administrative procedure; hearings; review.

JUDICIAL DECISIONS

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

35-8-8. Requirements for appointment or certification of persons as peace officers and preemployment attendance at basic training course; "employment related information" defined.

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for the purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her exercise of the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. Peace officers who do not perform satisfactorily on the examination shall be ineligible to retake such examination for a period of 30 days after an unsuccessful attempt. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law enforcement unit is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of subsection (a) of this Code section.

(c)(1) For purposes of this subsection, the term "employment related information" means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed $25.00 or $0.25 per page, whichever is greater. No employer shall be required to prepare or create any document not already in the employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.

(4) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing contained in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.

(5) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related

information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information. The request for inspection shall be made within five business days from the date that the applicant, candidate, or peace officer is notified of the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

(6) Nothing contained in this Code section shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this Code section for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located. (Ga. L. 1970, p. 208, § 8; Ga. L. 1973, p. 539, § 1; Ga. L. 1976, p. 1563, § 1; Ga. L. 1976, p. 1684, §§ 3, 4; Ga. L. 1977, p. 712, § 1; Ga. L. 1977, p. 1180, §§ 1, 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2004, p. 986, § 2; Ga. L. 2008, p. 237, § 2/SB 373; Ga. L. 2011, p. 545, § 1/SB 95; Ga. L. 2013, p. 864, § 2/HB 366.)

The 2013 amendment, effective July 1, 2013, substituted "30 days" for "six months" in the fourth sentence of paragraph (a)(8).

35-8-10. Applicability and effect of certification requirements generally; requirements as to exempt persons.

JUDICIAL DECISIONS

No twelve month gap in employment of deputy. — When a deputy arrested a person for being drunk at a high school football game, the deputy was entitled to qualified immunity as to the arrestee's excessive force claim because, inter alia, the deputy was certified under Georgia law, and thus, the requirement that registered peace officers not have more than a 12-month gap between posi-

tions in law enforcement was inapplicable to the deputy. Collins v. Ensley, No. 11-16077, 2012 U.S. App. LEXIS 24024 (11th Cir. Nov. 21, 2012) (Unpublished).

35-8-14. Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests.

Reserved. Repealed by Ga. L. 1982, p. 2478, § 9, effective November 1, 1982.

Editor's notes. — Ga. L. 2013, p. 141, § 35/HB 79, effective April 24, 2013, reserved the designation of this Code section.

35-8-17. Effect of peace officer's failure to comply with chapter generally; civil actions against noncomplying peace officers and law enforcement units.

JUDICIAL DECISIONS

Failure to complete training did not create 42 U.S.C. § 1983 liability. — In a 42 U.S.C. § 1983 action, an inquiry into whether a police officer lost the officer's police powers by not completing required training had no bearing on the analysis of whether the officer unlawfully arrested the decedent or used excessive force as a violation of Georgia law governing required police training did not impact the Fourth Amendment violation inquiry. Williams v. Deal, No. 311-061, 2014 U.S. Dist. LEXIS 114635 (S.D. Ga. Aug. 18, 2014).

Officer did not have the authority to effectuate arrests or use deadly force as a police officer since at the time of the incidents, the officer had lost the officer's authority to exercise law enforcement powers under Georgia law because the officer had not completed required annual training. Thus, the officer was not acting within the scope of the officer's authority and could not invoke qualified immunity as a defense to a 42 U.S.C. § 1983 action. Williams v. Deal, No. 311-061, 2014 U.S. Dist. LEXIS 114635 (S.D. Ga. Aug. 18, 2014).

35-8-21. Training requirements for peace officers; waiver; exemption for retired peace officers; confirmation of training.

(a) During calendar year 1999 and during each calendar year thereafter, any person employed or appointed as a peace officer shall complete 20 hours of training as provided in this Code section; provided, however, that any peace officer serving with the Department of Public Safety who is a commissioned officer shall receive annual training as specified by the commissioner of public safety.

(b) The training required by subsection (a) of this Code section shall be completed in sessions approved or recognized by the Georgia Peace Officer Standards and Training Council.

(c) Peace officers who satisfactorily complete the basic course of training in accordance with the provisions of this chapter shall be

excused from the minimum annual training requirement for the calendar year during which the basic course is completed.

(d) Any peace officer who does not fulfill the training requirements of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a peace officer that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(f) Any person who is registered or certified with the council as a retired peace officer is excused and exempt from compliance with this Code section for the year in which he or she retires. A retired peace officer may voluntarily comply with the requirements of this Code section and, in that event, such retired peace officer shall receive such minimal annual training without payment of any fees or costs, but only if sufficient class space is available. Nothing in this subsection shall be deemed to grant an exemption to persons required to complete the annual training requirement of this Code section.

(g) Any person required to comply with this Code section shall provide confirmation of his or her training for the previous year to the council in a manner required by the council. Failure to provide the council with confirmation of training in a timely manner or failure to obtain required training in a timely manner shall result in an emergency suspension of the officer's certification by the executive director. The order of emergency suspension issued by the executive director shall be made in writing and shall specify the basis for the determination. The emergency suspension order shall continue in effect until the training requirements are confirmed or a waiver is issued pursuant to subsection (e) of this Code section. An emergency suspension issued pursuant to this subsection shall be automatically withdrawn upon confirmation of required training or the issuance of a waiver by the council. (Code 1981, § 35-8-21, enacted by Ga. L. 1988, p. 1063, § 1; Ga. L. 1999, p. 777, § 5; Ga. L. 2004, p. 986, § 2A; Ga. L. 2013, p. 864, § 3/HB 366.)

The 2013 amendment, effective July 1, 2013, deleted "after April 1 in any calendar year" following "chapter" in the middle of subsection (c); inserted "or her" in subsection (d); inserted "or she" near the middle of subsection (e); added "for the year in which he or she retires" at the end of the first sentence of subsection (f); and added subsection (g).

JUDICIAL DECISIONS

Failure to complete training did not create 42 U.S.C. § 1983 liability. — In a 42 U.S.C. § 1983 action, an inquiry into whether a police officer lost the officer's police powers by not completing required training had no bearing on the analysis of whether the officer unlawfully arrested the decedent or used excessive force as a violation of Georgia law governing required police training did not impact the Fourth Amendment violation inquiry. Williams v. Deal, No. 311-061, 2014 U.S. Dist. LEXIS 114635 (S.D. Ga. Aug. 18, 2014).

Officer did not have the authority to effectuate arrests or use deadly force as a police officer since at the time of the incidents the officer had lost the officer's authority to exercise law enforcement powers under Georgia law because the officer had not completed required annual training. Thus, the officer was not acting within the scope of the officer's authority and could not invoke qualified immunity as a defense to a 42 U.S.C. § 1983 action. Williams v. Deal, No. 311-061, 2014 U.S. Dist. LEXIS 114635 (S.D. Ga. Aug. 18, 2014).

35-8-26. (For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.

Delayed effective date. — Ga. L. 2006, p. 666, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2007, excepting that provisions applying to council certification and provisions for training offered by the Georgia Public Safety Training Center shall become effective six months after the effective date of an appropriations Act containing a specific appropriation to fund certification by the council and training by the center." Funds were not appropriated at the 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 sessions of the General Assembly.

TITLE 36

LOCAL GOVERNMENT

Provisions Applicable to Counties Only

Chap.

5. Organization of County Government, 36-5-1 through 36-5-29.

12. Supervision and Support of Paupers, 36-12-1 through 36-12-5.

15. County Law Library, 36-15-1 through 36-15-12.

Provisions Applicable to Municipal Corporations Only

30. General Provisions, 36-30-1 through 36-30-13.

31. Incorporation of Municipal Corporations, 36-31-1 through 36-31-12.

32. Municipal Courts, 36-32-1 through 36-32-40.

33. Liability of Municipal Corporations for Acts or Omissions, 36-33-1 through 36-33-6.

35. Home Rule Powers, 36-35-1 through 36-35-8.

36. Annexation of Territory, 36-36-1 through 36-36-119.

37. Acquisition and Disposition of Real and Personal Property Generally, 36-37-1 through 36-37-10.

42. Downtown Development Authorities, 36-42-1 through 36-42-17.

44. Redevelopment Powers, 36-44-1 through 36-44-23.

Provisions Applicable to Counties and Municipal Corporations

60. General Provisions, 36-60-1 through 36-60-26.

61. Urban Redevelopment, 36-61-1 through 36-61-19.

66B. Mobile Broadband Infrastructure Leads to Development, 36-66B-1 through 36-66B-7.

76. Expedited Franchising of Cable and Video Services, 36-76-1 through 36-76-11.

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

80. General Provisions, 36-80-1 through 36-80-25.

81. Budgets and Audits, 36-81-1 through 36-81-20.

82. Bonds, 36-82-1 through 36-82-256.

83. Local Government Investment Pool, 36-83-1 through 36-83-8.

87. Participation in Federal Programs, 36-87-1 through 36-87-2.

91. Public Works Bidding, 36-91-1 through 36-91-119.

Provisions Applicable to Counties Only

CHAPTER 1

GENERAL PROVISIONS

36-1-1. Names of counties.

JUDICIAL DECISIONS

Cited in Ga. Reg'l Transp. Auth. v. Foster, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

36-1-4. When county liable to be sued.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Extent of immunity.

Sovereign immunity barred the plaintiff's claims against the defendant county because, under O.C.G.A. § 36-1-4, a county was not liable to suit for any cause of action unless made so by statute, and the county's sovereign immunity had not been waived with respect to the claims asserted by the plaintiff. McRae v. Perry, No. 211-193, 2012 U.S. Dist. LEXIS 169081 (S.D. Ga. Nov. 28, 2012).

Medical care for inmates. — Trial court correctly determined that the state law claims made against a county and against a sheriff and medical contract compliance administrator in their official capacities were barred because, although O.C.G.A. § 42-5-2(a) imposed upon the county the duty and cost of medical care for inmates in the county's custody, it did not waive sovereign immunity of the county or the county's agents or employees. Graham v. Cobb County, 316 Ga. App. 738, 730 S.E.2d 439 (2012).

County's immunity regarding tax sale. — Pursuant to O.C.G.A. § 36-1-4 and Ga. Const. 1983, Art. I, Sec. II, Para. IX (e), a county was immune from a lender's suit because the lender pointed to no statute creating a waiver of immunity or any factual scenario warranting a waiver with respect to the lender's claim that the county failed to give it notice of the availability of excess funds following a tax sale as required by O.C.G.A. § 48-4-5. Bartow County v. S. Dev., III, L.P., 325 Ga. App. 879, 756 S.E.2d 11 (2014).

CHAPTER 3

COUNTY BOUNDARIES

ARTICLE 2

SETTLEMENT OF BOUNDARY DISPUTES

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

36-3-20. Presentment of boundary dispute by grand jury; certification to Governor; appointment of surveyor to define line; return of survey and plat to Secretary of State.

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-23. Filing of survey and plat with Secretary of State; time for protest or exceptions thereto.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-24. Notice and hearing of protest or exceptions by Secretary of State.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb

County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-25. Recordation of survey and plat; conclusive effect; subsequent changes of boundary line.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

CHAPTER 5

ORGANIZATION OF COUNTY GOVERNMENT

Article 2
County Governing Authorities

ARTICLE 2
COUNTY GOVERNING AUTHORITIES

36-5-24. Definitions; compensation of members of county governing authorities.

(a) As used in this Code section, the term:

(1) "County governing authority" means a governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected county chief executive officer.

(2) "Expenses in the nature of compensation" means any expense allowance or any form of payment or reimbursement of expenses other than reimbursement for expenses actually and necessarily incurred by members of a county governing authority.

(b) Unless otherwise provided by local law, the governing authority of each county is authorized to fix the salary, compensation, expenses, and expenses in the nature of compensation of the members of the governing authority subject to the following conditions:

(1) Any increase in salary, compensation, expenses, or expenses in the nature of compensation for members of a county governing

authority shall not be effective until the first day of January of the year following the next general election held after the date on which the action to increase the compensation was taken;

(2) A county governing authority shall take no action to increase salary, compensation, expenses, or expenses in the nature of compensation until notice of intent to take such action and the fiscal impact of such action has been published in a newspaper designated as the legal organ of the county at least once a week for three consecutive weeks immediately preceding the meeting at which the action is taken; and

(3) Such action shall not be taken during the period of time beginning with the date that candidates for election as members of the county governing authority may first qualify as such candidates and ending with the first day of January following the date of qualification.

(c) Salary, compensation, expenses, and expenses in the nature of compensation paid to members of a county governing authority in accordance with applicable local or general salary laws in effect on January 1, 2001, and as subsequently amended, shall continue in full force and effect as compensation for such county officials unless such compensation is increased pursuant to subsection (b) of this Code section; and this Code section shall not affect the power of the General Assembly at any time by local or general law to increase or decrease any or all of such compensation or by local law to withdraw the authority otherwise granted to a county governing authority under this Code section. (Code 1981, § 36-5-24, enacted by Ga. L. 2001, p. 789, § 1; Ga. L. 2013, p. 141, § 36/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "of the county" for "for the county" in the middle of paragraph (b)(2).

CHAPTER 9

COUNTY PROPERTY GENERALLY

36-9-2. Control and disposal of county property generally.

JUDICIAL DECISIONS

Failure to comply with O.C.G.A. § 36-9-2 not a bar to bona fide purchaser's title. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the

county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

36-9-3. Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

Heirs unable to repurchase because bona fide purchaser had purchased. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

CHAPTER 10

PUBLIC WORKS CONTRACTS

36-10-1. Contracts to be in writing and entered on minutes.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

ANALYSIS

ENFORCEABILITY OF CONTRACTS

Enforceability of Contracts

Ultra vires contract not enforceable under quantum meruit theory of recovery. — Appellate court erred by holding that an environmental engineering company could recover against a city on the company's quantum meruit claim because quantum meruit was not an available remedy against the city since the claim was based on a municipal contract that was ultra vires as the contract

was never approved by city council. City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

CHAPTER 11

CLAIMS AGAINST COUNTIES

36-11-1. Time for presentation of claims.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PRESENTATION OF CLAIMS
PROCEDURE

General Consideration

Construction with O.C.G.A. § 33-24-51(b). — Limited waiver of sovereign immunity set forth in O.C.G.A. § 33-24-51(b) does not implicate the 12-month presentation requirement under O.C.G.A. § 36-11-1. Warnell v. Unified Gov't of Athens-Clarke County, 328 Ga. App. 903, 763 S.E.2d 284 (2014).

Presentation of Claims

Outside law firm not authorized to receive notice for county. — Trial court erred by ruling that there was substantial compliance with O.C.G.A. § 36-11-1 by plaintiffs sending notice of the plaintiff's suit against a county to a private law firm used by the county as outside legal counsel because the firm was not in-house or any department or official of a county and, thus, was not authorized to receive notice. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348 (2012).

Procedure

Time to submit claim.

Under O.C.G.A. § 36-11-1, all claims against counties must be presented within 12 months after the claims accrue or become payable or the claims are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348 (2012).

Trial court did not err by denying a county's motion for summary judgment because an issue of fact existed as to when the parties expected the project to be complete; thus, it followed that there was an issue of fact regarding when, if ever, the county breached the county's agreement to provide water and sewer lines and when the plaintiff's claim of breach of contract accrued and therefore whether the bankruptcy trustee timely filed notice as required by O.C.G.A. § 36-11-1. Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600 (2014).

Trial court properly granted a county's motion for summary judgment because the record showed that the plaintiffs failed to present notice of the plaintiffs' claim to the county with the 12-month statutory period and admittedly failed to present the county with formal written notice before the plantiffs filed the plaintiffs' suit, which the plaintiffs did not file against the County until more than 22 months after the accident. Warnell v. Unified Gov't of Athens-Clarke County, 328 Ga. App. 903, 763 S.E.2d 284 (2014).

CHAPTER 12

SUPERVISION AND SUPPORT OF PAUPERS

36-12-5. Interment or cremation of deceased indigents.

(a) Whenever any person dies in this state and the decedent, his or her family, and his or her immediate kindred are indigent and unable to provide for the decedent's decent interment or cremation, the governing authority of the county wherein the death occurs shall make available from county funds a sum sufficient to provide a decent interment or cremation of the deceased indigent person or to reimburse such person as may have expended the cost thereof voluntarily, the exact amount thereof to be determined by the governing authority of the county but shall not exceed the lesser of the actual costs of interment or cremation.

(b) The Department of Corrections is authorized to reimburse the governing authority of the county where expenditures have been made in accordance with this Code section for the burial or cremation of any inmate under the authority, jurisdiction, or control of the Department of Corrections; but in no case shall the governing authority of the county be entitled to reimbursement where the decedent was in the custody of a county correctional institution or other county correctional facility. (Ga. L. 1863-64, p. 60, § 1; Code 1868, § 788; Code 1873, § 766; Code 1882, § 766; Civil Code 1895, § 441; Civil Code 1910, § 556; Code 1933, § 23-2304; Ga. L. 1967, p. 616, § 1; Ga. L. 1972, p. 971, § 1; Ga. L. 1974, p. 616, § 1; Ga. L. 1978, p. 1048, § 1; Ga. L. 1980, p. 722, § 1; Ga. L. 1982, p. 2107, § 34; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 265, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 431, §§ 1, 2; Ga. L. 2013, p. 669, § 1/SB 83.)

The 2013 amendment, effective July 1, 2013, inserted "or cremation" throughout this Code section; in subsection (a), twice inserted "or her", substituted "the decedent's decent" for "his decent", and inserted "but shall not exceed the lesser of the actual costs of interment or cremation" at the end.

CHAPTER 15

COUNTY LAW LIBRARY

36-15-9. Collection of additional costs in court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.

(a) For the purpose of providing funds for those uses specified in Code Section 36-15-7, a sum not to exceed $5.00, in addition to all other legal costs, may be charged and collected in each action or case, either civil or criminal, including, without limiting the generality of the foregoing, all adoptions, certiorari, applications by personal representatives for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of civil or criminal or quasi-criminal nature, filed in the superior, state, probate, and any other courts of record, except county recorders' courts or municipal courts. The amount of such additional costs to be charged and collected, if any, in each such case shall be fixed by the chief judge of the superior court of the circuit in which such county is located. Such additional costs shall not be charged and collected unless the chief judge first determines that a need exists for a law library in the county. The clerk of each and every such court in such counties in which such a law library is established shall collect such fees and remit the same to the treasurer of the board of trustees of the county law library of the county in which the case was brought, on the first day of each month. Where fees collected by the treasurer have been allocated for the purpose of establishing or maintaining the codification of county ordinances, the allocated amount shall in turn be remitted by the treasurer to the county governing authority for said purpose on a monthly basis or as otherwise agreed by the treasurer and the county governing authority. The county ordinance code provided for in subsection (a) of Code Section 36-15-7 shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fine and bond forfeiture fund of the court in which the case is filed, before any other disbursement or distribution of such fines or forfeitures is made.

(a.1) In any county having a population of more than 550,000 according to the United States decennial census of 1980 or any future such census, the power and authority provided in subsection (a) of this Code section for the chief judge shall be exercised by the superior court judge who has the most service as a superior court judge.

(b) A case, within the meaning of subsection (a) of this Code section, shall mean and be construed as any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.

(c) Reserved.

(d) Notwithstanding that provision of subsection (a) of this Code section which excepts recorders' courts from the requirement of charging and collecting the additional costs provided for by said subsection (a), said subsection (a) and subsection (b) of this Code section shall be applicable to the recorder's court of each county of this state having a population of not less than 200,000 nor more than 275,000 according to the United States decennial census of 1980 or any future such census.

(e) Notwithstanding that provision of subsection (a) of this Code section which excepts county recorders' courts and municipal courts from the requirement of charging and collecting the additional costs provided for by that subsection (a), subsections (a) and (b) of this Code section shall apply to any municipal court of a municipality if the governing authority thereof, by ordinance or resolutions, approves the charging and collecting of such costs pursuant to subsections (a) and (b) of this Code section.

(f) The sums provided for in subsection (a) of this Code section for actions, cases, or proceedings civil in nature which are filed in the superior courts shall be collected in accordance with the provisions of subsection (b) of Code Section 15-6-77.

(g) In counties where a law library authorized by this chapter has not been established, upon request of the county governing authority, the chief judge of a circuit shall direct that the fees authorized by this Code section be charged and collected for the purpose of the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification. The clerk of each and every court in such counties in which costs are collected for the purpose of carrying out the provisions of this subsection shall remit the same to the county governing authority on the first day of each month. The county ordinance code provided for in this subsection shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fine and bond forfeiture fund of the court in which the case is filed before any other disbursement or distribution of such fines or forfeitures is made. (Ga. L. 1971, p. 180, §§ 6, 9; Ga. L. 1973, p. 430, § 3; Ga. L. 1976, p. 700, § 2; Ga. L. 1982, p. 520, §§ 1, 2; Ga. L. 1982, p. 591, § 1; Ga. L. 1982, p. 1103, § 2; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 999, § 1; Ga. L. 1987, p. 3, § 36; Ga.

L. 1987, p. 843, § 2; Ga. L. 1991, p. 1324, § 6; Ga. L. 1993, p. 91, § 36; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 1923, § 3; Ga. L. 1997, p. 392, §§ 3, 4; Ga. L. 1999, p. 81, § 36; Ga. L. 2000, p. 865, § 2; Ga. L. 2015, p. 693, § 3-33/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fine and bond forfeiture fund" for "fines and forfeitures fund" in the last sentence in subsections (a) and (g). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Provisions Applicable to Municipal Corporations Only

CHAPTER 30

GENERAL PROVISIONS

Sec.
36-30-9. Compensation of law enforcement officers.

Cross references. — Self authentication, § 24-9-902.

36-30-1. Meaning of terms "city," "town," "municipality," or "village."

JUDICIAL DECISIONS

Cited in Ga. Reg'l Transp. Auth. v. Foster, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

36-30-3. Ordinances of a council not to bind succeeding councils; exceptions.

Law reviews. — For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SPECIFIC CONTRACTS

General Consideration

Cited in Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Specific Contracts

Agreement to construct and maintain parking area and sidewalk. — Agreement entered in 1954 between a city and an apartment owner for the construction of a parking lot and sidewalk to relieve traffic congestion was not subject to O.C.G.A. § 36-30-3(a)'s prohibition against binding successor councils because the construction and maintenance of the sidewalk and parking area were in the nature of a government's proprietary functions. Unified Gov't of Athens-Clarke Co. v. Stiles Apts., 295 Ga. 829, 764 S.E.2d 403 (2014).

City not bound by county's issuance of fifteen year alcohol license. — Although a nude dancing business had entered into a 15-year contract with the newly-incorporated city's predecessor (the county) for an alcohol license, the city was not bound by the county's agreement pursuant to O.C.G.A. § 36-30-3(a). Trop, Inc. v. City of Brookhaven, 296 Ga. 85, 764 S.E.2d 398 (2014).

36-30-7. Authorization and procedure for surrender of corporate charter.

JUDICIAL DECISIONS

Cited in Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

36-30-9. Compensation of law enforcement officers.

It shall be unlawful for any municipal corporation to provide commissions or percentages of any fines and bond forfeitures derived from any arrests made by law enforcement officers as compensation or any part thereof. The sole basis of compensating such employees shall be by a fixed salary, to be provided by the governing authority of such municipal corporation. (Ga. L. 1963, p. 479, § 1; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in the first sentence of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

CHAPTER 31

INCORPORATION OF MUNICIPAL CORPORATIONS

36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.

JUDICIAL DECISIONS

Cited in City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

36-31-6. Responsibility of the Attorney General for preclearances.

Reserved. Repealed by Ga. L. 2015, p. 385, § 6-3/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1981, § 36-31-6, enacted by Ga. L. 2005, p. 185, § 3/HB 36.

Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-31-7.1. Ownership and control of county road rights of way.

(a) When a new municipal corporation is created by Act of the General Assembly, the new municipality shall assume the ownership, control, care, and maintenance of county road rights of way located within the area incorporated unless the municipality and the county agree otherwise by joint resolution.

(b) This Code section shall apply to any new municipal corporation created by Act of the General Assembly on or after April 15, 2005. (Code 1981, § 36-31-7.1, enacted by Ga. L. 2015, p. 1358, § 2/HB 477.)

Effective date. — This Code section became effective May 12, 2015.

36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.

(a) When a new municipal corporation is created by local Act, the local Act may provide for a transition period not to exceed 24 months for the orderly transition of governmental functions from the county to the new municipal corporation. The local Act may specify the time or times during the transition period (or the method or methods for determining the time or times during the transition period) at which:

(1) Various governmental functions, services, and responsibilities will be assumed by the new municipal corporation within its territory; and

(2) The municipal court of the new municipality shall begin to exercise its jurisdiction over various subject matters.

(b) When a chartering local Act so provides for a transition period, the county in which the new municipality is located shall continue to provide within the territory of the new city all government services and functions which it provided as of the date of enactment of the chartering local Act. The county shall continue to provide such services and functions until the end of the transition period; provided, however, that the new city may assume the provision of any service or function at such earlier time as may be specified in the chartering local Act or at such earlier time as may be agreed upon by the county and the new city.

(c) When a chartering local Act so provides for a transition period, on and after the first day the initial governing authority takes office, the governing authority may from time to time adopt appropriate measures to initiate collection within the territory of the new city during the transition period of all taxes, fees, assessments, fines and bond forfeitures, and other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected by the city during the transition period is specifically related to the provision of a particular government service or function by the county, the service or function shall continue to be provided by the county during the transition period contingent upon payment by the city of the actual cost of providing such service or function unless otherwise provided in a written agreement between the new city and the county.

(d) When a chartering local Act so provides for a transition period, the county in which the new city is located shall not from the time of enactment of the charter until the end of the transition period remove from the county road system any road within the territory of the new city except with the agreement of the new city.

(e) When a chartering local Act so provides for a transition period, the new municipality shall not be subject to the laws specified in this

subsection during the transition period; provided, however, that the new city and other political subdivisions may during the transition period commence planning, negotiations, and other actions necessary or appropriate for compliance after the transition period. During the transition period, the new municipality shall not be subject to:

(1) Chapter 70 of this title, relating to planning and service delivery strategies;

(2) Provisions of Code Section 12-8-31.1, relating to solid waste planning;

(3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected and expended pursuant to Article 3 of Chapter 13 of Title 48; and

(4) Provisions of Code Section 36-81-8, relating to reporting of local government finances, reporting of revenues derived from a tax levied pursuant to Article 3 of Chapter 13 of Title 48, and reporting of local government services and operations.

(f) When a chartering local Act so provides for a transition period, upon the termination of the transition period subsections (b) through (e) of this Code section shall cease to apply and the new city shall be a fully functioning municipal corporation and subject to all general laws of this state.

(g) As of the date a chartering local Act is approved by the Governor or becomes law without such approval, the Governor is authorized to appoint five persons to serve as interim representatives of the newly incorporated municipality until the election of the municipality's first governing authority. The interim representatives shall cease to serve as of the time the members of the first governing authority take office. The function of the interim representatives shall be to facilitate the provision of municipal services and facilities, the collection of taxes and fees, and the negotiation of intergovernmental agreements in preparation of the establishment of the new municipality. The interim representatives shall not have the ability to enter into any binding agreements, to expend public funds, or to incur any liability on behalf of the new municipality. Any person who is serving as or has served as an interim representative shall be ineligible to qualify for election as a member of the initial governing authority of the new municipality. (Code 1981, § 36-31-8, enacted by Ga. L. 2005, p. 185, § 3/HB 36; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in the first sentence of subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture

that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

CHAPTER 32

MUNICIPAL COURTS

Article 1

General Provisions

ARTICLE 1

GENERAL PROVISIONS

36-32-1. Establishment of municipal court; punishments; selection, election, or appointment of mayor pro tempore or recorder pro tempore.

(a) Each municipal corporation of this state shall, unless otherwise provided in the local law relating to a particular municipal corporation, be authorized to establish and maintain a municipal court having jurisdiction over the violation of municipal ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal courts. Any such court shall be styled as a municipal court. Any reference in this Code or in any local law to a corporate court, police court, recorder's court, mayor's court, or any such court known by any other name which has jurisdiction over the violation of municipal offenses shall be deemed to mean a municipal court. Except in this Code section and in the laws relating to the City Court of Atlanta, the terms

"corporate court," "corporate courts," "police court," "police courts," "recorder's court," "recorders' courts," "mayor's court," and "mayors' courts," when such terms refer to a court of a municipal corporation, are stricken wherever they appear in any general or local law of this state and the term "municipal court" or "municipal courts," whichever is appropriate, is inserted in lieu thereof. The change in the name of any such court as provided for by Article VI, Section X, Paragraph I of the Constitution of the State of Georgia and by this Code section shall not affect the validity of any action or prosecution in such court.

(b) The provisions of this chapter shall apply equally to all municipal courts, whether heretofore styled as a municipal court, corporate court, police court, recorder's court, or mayor's court or called by some other name and whether established by the municipal corporation under authority granted to the municipal corporation or established by the local law relating to a particular municipal corporation.

(c) Each municipal court of this state, unless otherwise provided in the local law relating to a particular municipal court, shall be authorized to impose any punishment up to the maximums specified by general law, including the maximums specified in subparagraphs (a)(2)(B) and (a)(2)(C) of Code Section 36-35-6.

(d) The governing bodies of the municipal corporations of this state having a municipal court are authorized and empowered, either by ordinance or resolution, to select, elect, or appoint either a mayor pro tempore or a recorder pro tempore to hold and preside over such municipal court in the absence or disqualification of the mayor or recorder. While presiding in such corporate courts, the mayor pro tempore or recorder pro tempore shall have such power, authority, and jurisdiction as is given by the charter of the municipal corporation to its mayor or recorder.

(e) Subsection (d) of this Code section shall not affect any municipal corporation for which provision is made in the charter for the appointment or selection of a mayor pro tempore or a recorder pro tempore.

(f) Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.

(g) Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.

(h) Any municipality or municipal court may contract with the office of the circuit public defender of the judicial circuit in which such municipality is located as a means of complying with the municipality's or municipal court's legal obligation to provide defense counsel at no cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws. (Ga. L. 1922, p. 133, §§ 1, 2; Code 1933, §§ 69-702, 69-703; Ga. L. 1986, p. 784, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2003, p. 191, § 9; Ga. L. 2015, p. 519, § 8-9/HB 328.)

The 2015 amendment, effective July 1, 2015, deleted substituted "Georgia Public Defender Council" for "Georgia Public Defender Standards Council" near the end of subsections (f) and (g).

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. -- While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-1.1. Municipal court judges; qualifications to serve.

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. -- While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-2. Appointment of judges.

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-6. Jurisdiction in marijuana possession cases; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of any municipality is granted jurisdiction to try and dispose of cases where a person is charged with the possession of one ounce or less of marijuana if the offense occurred within the corporate limits of such municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with possession of an ounce or less of marijuana in a municipal court shall be entitled on request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-6, enacted by Ga. L. 1983, p. 825, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1377, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

36-32-7. Jurisdiction in cases of operating motor vehicle without effective insurance; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of each municipality is granted jurisdiction to try and dispose of cases where a person is charged with a misdemeanor under Code Section 40-6-10 of knowingly operating or knowingly authorizing the operation of a motor vehicle without effective insurance of such vehicle or without an approved plan of self-insurance as required by Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act," if the offense occurred within the corporate limits of such municipality. The jurisdiction of each such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 40-6-10 in a municipal court shall be entitled on request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Ga. L. 1974, p. 113, § 14; Ga. L. 1978, p. 1369, § 1; Code 1981, § 36-32-7, enacted by Ga. L. 1985, p. 891, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

36-32-8. Jurisdiction in cases of operating motor vehicle without certificate of emission inspection; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of each municipality of each county required to comply with Article 2 of Chapter 9 of Title 12, known as the "Georgia Motor Vehicle Emission Inspection and Maintenance Act," is granted jurisdiction to try and dispose of such cases in which a person is charged with a misdemeanor under Code Section 12-9-55 of operating a responsible motor vehicle without a certificate of emission inspection, if the

offense occurred within the corporate limits of such municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 12-9-55 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine in excess of the limits set forth in Code Section 12-9-55. (Code 1981, § 36-32-8, enacted by Ga. L. 1985, p. 1390, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 918, § 4; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

36-32-9. Misdemeanor theft by shoplifting or misdemeanor refund fraud; transfer of cases; penalties; retention of fines and bond forfeitures; reports.

(a) The municipal court is granted jurisdiction to try and dispose of cases in which a person is charged with a misdemeanor theft by shoplifting or misdemeanor refund fraud if the offense occurred within the corporate limits of the municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any person charged in a municipal court with misdemeanor theft by shoplifting or misdemeanor refund fraud shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(c)(1) A person convicted in a municipal court of misdemeanor theft by shoplifting shall be punished as provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing in this Code section or Code Section 16-8-14 shall be construed to give any

municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(2) A person convicted in a municipal court of misdemeanor refund fraud shall be punished as provided in the misdemeanor penalties set forth in Code Section 16-8-14.1, provided that nothing in this Code section or Code Section 16-8-14.1 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(d) Any fines and bond forfeitures arising from the prosecution of such cases in such municipal court shall be retained by the municipality and shall be paid into the treasury of such municipality.

(e) It shall be the duty of the appropriate agencies of the municipality in which an offense under subsection (a) of this Code section is charged to make any reports to the Georgia Crime Information Center required under Article 2 of Chapter 3 of Title 35. (Code 1981, § 36-32-9, enacted by Ga. L. 1987, p. 1153, § 1; Ga. L. 1998, p. 188, § 1; Ga. L. 1999, p. 831, § 1; Ga. L. 2012, p. 899, § 8-14/HB 1176; Ga. L. 2014, p. 404, § 2-3/SB 382; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2014 amendment, effective July 1, 2014, in subsections (a) and (b), inserted "or misdemeanor refund fraud"; redesignated the provisions of subsection (c) as paragraph (c)(1); and added paragraph (c)(2).

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (d). See editor's note for applicability.

Editor's notes. — Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; retention of fines and bond forfeitures; transfer of cases; penalties.

(a) The municipal courts are granted jurisdiction to try and dispose of a first offense violation of Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a first offense violation of Code Section 3-3-23 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted in a municipal court of a first offense violation of Code Section 3-3-23 shall be punished as provided in paragraph (1) of subsection (b) of Code Section 3-3-23.1, provided that nothing in this Code section or Code Section 3-3-23.1 shall be construed to give any municipal corporation the right to impose a fine or punishment in excess of the limits set forth in the charter of such municipal corporation.

(e) Nothing in this Code section shall affect the original and exclusive jurisdiction of the juvenile court as set forth in Code Section 15-11-10. (Code 1981, § 36-32-10, enacted by Ga. L. 1987, p. 1462, § 1; Ga. L. 2000, p. 20, § 22; Ga. L. 2013, p. 294, § 4-46/HB 242; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-10" for "Code Section 15-11-28" at the end of subsection (e). See editor's note for applicability.

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

36-32-10.1. Jurisdiction in counties without state court to try violations of Code Section 16-7-21; retention of fines and bond forfeitures; transfer of cases; penalties.

(a) The municipal court of each municipal corporation in counties where there is no state court is granted jurisdiction to try and dispose of any violation of Code Section 16-7-21, relating to criminal trespass, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concur-

rent with the jurisdiction of any other court within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of any such case in the municipal court shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a violation of Code Section 16-7-21 in a municipal court shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted of a violation of Code Section 16-7-21 shall be punished as provided in such Code section, provided that nothing in this Code section or in Code Section 16-7-21 shall be construed to give any municipal court the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter. (Code 1981, § 36-32-10.1, enacted by Ga. L. 1992, p. 1281, § 1; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

CHAPTER 33

LIABILITY OF MUNICIPAL CORPORATIONS FOR ACTS OR OMISSIONS

Sec.
36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.

36-33-1. Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Waiver by purchase of liability insurance.

Although a fact issue existed as to whether a city had waived the city's sovereign immunity by purchasing insurance that covered an arrestee's claims arising from an arrest for burglary, the claims for slander, fraud, false imprisonment, and racketeering failed because there was probable cause to make the arrest. Gray v. Ector, No. 12-11323, 2013 U.S. App. LEXIS 19261 (11th Cir. Sept. 18, 2013) (Unpublished).

Court must apply proper analysis. — Judgment of the appellate court affirming the trial court's grant of summary judgment to a city based on sovereign immunity was vacated because the appellate court, like the trial court's ruling on the city's motion, gave no consideration to whether the alleged negligence by the city occurred in the performance of a governmental function and did not acknowledge or apply the definitions of governmental and ministerial functions as those terms relate to the city's sovereign immunity. Primas v. City of Milledgeville, 296 Ga. 584, 769 S.E.2d 326 (2015).

Liability for Ministerial Functions

Provision of medical care to inmate. — City's and police chief's provision of medical care to a diabetic inmate in their custody was a ministerial act and, because it was a ministerial act, sovereign immunity was waived pursuant to O.C.G.A. § 36-33-1(b). City of Atlanta v. Mitcham, 325 Ga. App. 481, 751 S.E.2d 598 (2013).

Failure to provide medical care to inmate. — In a negligence action filed by an inmate based on the city's and the police chief's failure to provide medical care to the inmate, because the provision of medical care to inmates in the city's and the police chief's custody was a ministerial act, as the duty was imposed by statute, and medical care was a fundamental right of inmates in custody, sovereign or governmental immunity was not applicable, and the trial court did not err by denying the city's and the police chief's motion to dismiss for failure to state a claim based on sovereign immunity. City of Atlanta v. Mitcham, 2013 Ga. App. LEXIS 963 (Nov. 20, 2013).

The care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived. City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

Inmate precluded from pursuing negligence claim. — Appellate court erred by affirming a trial court's denial of a city's motion to dismiss an inmate's complaint because the care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived; therefore, the inmate was precluded from pursuing negligence claims. City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

Nuisances

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172 (2013).

Officers and Employees

Arrest.

When officers arrested a person who died shortly after the arrest, a city which employed one of the officers could not be held liable because: (1) the city was immune from claims involving police work unless the city waived that immunity; and (2) it was not shown that the city waived

Officers and Employees (Cont'd)

immunity. Hoyt v. Bacon County, No. 509-026, 2011 U.S. Dist. LEXIS 7330 (S.D. Ga. Jan. 26, 2011).

Sewers

Nuisance theory liability.

Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721 (2013).

36-33-2. Liability for failure to perform discretionary act.

JUDICIAL DECISIONS

Sewage back up. — Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721 (2013).

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172 (2013).

36-33-4. Personal liability of councilmembers and other municipal officers.

JUDICIAL DECISIONS

Immunity from liability.

City manager had official immunity in a defamation case under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 36-33-4 since: (1) the city finance director did not show that a statement the city manager made to the media regarding the city manager's concerns in the city finance director's department was outside the scope of the city manager's authority; (2) the city manager did not disclose anything to the city finance director's prospective employer that the prospective employer did not obtain through a Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., request; and (3) there was no policy that prohibited the city manager from verbally responding in conjunction with the city manager's Open Records Act response. Smith v. Lott, 317 Ga. App. 37, 730 S.E.2d 663 (2012).

Appellate court erred by affirming the grant of the individual defendants' motion to dismiss in a personal injury suit involving a pedestrian falling at a high school because whether official immunity barred the action was a fact-specific inquiry that had not been definitively answered since limited discovery had been undertaken. Austin v. Clark, 294 Ga. 773, 755 S.E.2d 796 (2014).

36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.

(a) No person, firm, or corporation having a claim for money damages against any municipal corporation on account of injuries to person or property shall bring any action against the municipal corporation for such injuries, without first giving notice as provided in this Code section.

(b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having the claim shall present the claim in writing to the governing authority of the municipal corporation for adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause of action therein has first been presented to the governing authority for adjustment.

(c) Upon the presentation of such claim, the governing authority shall consider and act upon the claim within 30 days from the presentation; and the action of the governing authority, unless it results in the settlement thereof, shall in no sense be a bar to an action therefor in the courts.

(d) The running of the statute of limitations shall be suspended during the time that the demand for payment is pending before such authorities without action on their part.

(e) The description of the extent of the injury required in subsection (b) of this Code section shall include the specific amount of monetary damages being sought from the municipal corporation. The amount of monetary damages set forth in such claim shall constitute an offer of compromise. In the event such claim is not settled by the municipal corporation and the claimant litigates such claim, the amount of monetary damage set forth in such claim shall not be binding on the claimant.

(f) A claim submitted under this Code section shall be served upon the mayor or the chairperson of the city council or city commission, as the case may be, by delivering the claim to such official personally or by certified mail or statutory overnight delivery. (Ga. L. 1899, p. 74, § 1; Civil Code 1910, § 910; Code 1933, § 69-308; Ga. L. 1953, Ex. Sess., p. 338, § 1; Ga. L. 1956, p. 183, § 1; Ga. L. 2014, p. 125, § 1/HB 135.)

The 2014 amendment, effective July 1, 2014, deleted "subsection (b) of" preceding "this Code section" near the end of subsection (a) and added subsections (e) and (f).

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014). For annual survey on trial practice and procedure, see 66 Mercer L. Rev. 211 (2014).

For note, "Taking a Toll on the Equities: Governing the Effect of the PLRA'S Exhaustion Requirements on State Statutes of Limitations," 47 Ga. L. Rev. 1321 (2013).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Claim for attorney fees and costs. Firefighters' request for costs of litigation, including attorney fees, was properly submitted to the jury in the firefighters' class action, challenging a promotional examination, as the firefighters were not statutorily required to give ante-litem notice to the city. City of Atlanta v. Bennett, 322 Ga. App. 726, 746 S.E.2d 198 (2013).

Construction with Georgia Tort Claims Act. — The tolling provision of O.C.G.A. § 36-33-5(d) cannot be harmonized with the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., and, thus, has no application to suits brought pursuant to the GTCA, notwithstanding the language of O.C.G.A. § 50-21-27(e). Ga. Reg'l Transp. Auth. v. Foster, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

Applicability to breach of contract. Subcontractor seeking to recover against a city for payment for work performed under a subcontract under theories of unjust enrichment, quantum merit, and implied obligation to pay was not required to comply with the ante litem notice requirements before filing suit because O.C.G.A. § 36-33-5(a) applied only to tort claims regarding personal injury or property damage. Contrary language in Jacks v. City of Atlanta, 284 Ga. App. 200 (2007),was disapproved. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015).

Procedure

Necessity of alleging timely notice. That part of the holding in Dover v. City of Jackson, 246 Ga. App. 524 (2000), requiring an ante litem notice for a statutory claim for attorney fees and costs of litigation is overruled because it is contrary to the specific statutory language, which limits its applicability to claims brought "on account of injuries to person or property"; the holding also ignores the courts' duty to strictly construe the statute because it is in derogation of common law. Greater Atlanta Home Builders Ass'n, Inc. v. City of McDonough, 322 Ga. App. 627, 745 S.E.2d 830 (2013).

CHAPTER 35

HOME RULE POWERS

36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.

Law reviews. — For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

36-35-6. Limitations on home rule powers.

(a) The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:

(1) Action affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members, except as authorized in Chapter 2 of Title 21 or as provided in Code Section 36-35-4.1;

(2)(A) Action defining any offense, which so defined, is also an offense under the criminal laws of Georgia;

(B) Action providing for confinement in excess of six months; and

(C) Action providing for fines and bond forfeitures in excess of $1,000.00;

(3) Action adopting any form of taxation beyond that authorized by law or by the Constitution;

(4) Action affecting the exercise of the power of eminent domain;

(5) Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution;

(6) Action affecting the jurisdiction of any court; and

(7) Action changing charter provisions relating to the establishment and operations of an independent school system.

(b) The power granted in subsections (a) and (b) of Code Section 36-35-3 shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

(c) Nothing in this Code section shall affect Code Sections 36-35-4 and 36-35-5. (Ga. L. 1965, p. 298, § 4; Ga. L. 1966, p. 296, §§ 2, 3; Ga.

L. 1970, p. 346, § 1; Ga. L. 1973, p. 778, § 3; Ga. L. 1981, p. 497, § 1; Ga. L. 1983, p. 468, §§ 1, 2; Ga. L. 1984, p. 22, § 36; Ga. L. 1998, p. 295, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" in subparagraph (a)(2)(C). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

CHAPTER 36

ANNEXATION OF TERRITORY

Article 1

General Provisions

Sec.

Article 6

Annexation of Unincorporated Islands

ARTICLE 1

GENERAL PROVISIONS

36-36-2. Effective date of annexation.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.

(a) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall file a report identifying any property annexed with the Department of Community Affairs and with the county governing authority of the county in which the property being annexed is located. Such reports

shall be filed, at a minimum, not more than 30 days following the last day of the quarter in which the annexation becomes effective but may be filed more frequently. Each report shall include the following:

(1) The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly;

(2) The name of the county in which the property being annexed is located; the total acreage annexed; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly;

(3) A letter from the governing authority of any municipality annexing property stating its intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the municipality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census; and

(4) A list identifying roadways, bridges, and rights of way on state routes that are annexed and, if necessary, the total mileage annexed.

(b) The submission of a report required under subsection (a) of this Code section shall be made in writing and may also be made in electronic format to the Department of Community Affairs and to others as required, at the discretion of the submitting municipality.

(c)(1) The Department of Community Affairs shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 30 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The annexing municipality shall file a corrected report with the department and the county governing authority where the annexed property is located within 45 days from the date of the notice of any deficiency.

(2) No annexed area shall be added to the state map until such report has been properly submitted to the Department of Community Affairs. The Department of Community Affairs shall not provide a certification of annexation to the United States Census Bureau unless the governing authority of the annexing municipality has filed a completed report as required under subsection (a) of this Code section.

(3) Compliance with the requirements of this Code section shall be construed to be merely ancillary to and not an integral part of the annexation procedure such that an annexation shall, if otherwise

authorized by law, become effective even though required filings under this Code section are temporarily delayed.

(d) The Department of Community Affairs may provide technical assistance to any municipality with respect to the requirements of subsection (a) of this Code section.

(e) The Department of Community Affairs shall maintain the annexation reports submitted to it pursuant to this Code section for two years. Annexation reports shall be subject to disclosure and inspection under Article 4 of Chapter 18 of Title 50 while maintained in the possession of the Department of Community Affairs. Two years after receipt of an annexation report from a municipality, the Department of Community Affairs shall transfer possession of such report to the Division of Archives and History for permanent retention.

(f) Reserved.

(g) The governing authority of any municipality annexing property shall add all annexed areas to maps provided by the United States Census Bureau during the next regularly scheduled boundary and annexation survey of the municipality, complete the survey and map as instructed, and return them to the United States Census Bureau within the time frame requested. (Code 1981, § 36-36-3, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 1; Ga. L. 2001, p. 811, § 1; Ga. L. 2002, p. 532, § 7; Ga. L. 2011, p. 583, § 10/HB 137; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2015, p. 385, § 6-4/HB 252.)

The 2015 amendment, effective July 1, 2015, substituted "Reserved." for the former provisions of subsection (f), which read: "The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall also file a copy of the transmittal letter to the United States Department of Justice seeking preclearance, without the attachments to such letter, with the Department of Community Affairs and with the governing authority of the county in which the property being annexed is located. This subsection shall apply so long as a filing with the United States Department of Justice is required."

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.

(a) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this subsection shall be prohibited:

(1) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting the annexing municipality;

(2) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries

abutting any combination of the annexing municipality and one or more other municipalities; or

(3) Annexation or deannexation which would result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

(b) When requested by resolution of the county governing authority, a municipality is authorized to provide any service or exercise any function within an unincorporated island. Such authority shall be in addition to any other authority of the municipality to provide extraterritorial services or functions. For purposes of this subsection, "unincorporated island" shall have the same meaning as contained in paragraph (3) of Code Section 36-36-90.

(c) The prohibition contained in subsection (a) of this Code section shall not apply to a local Act providing for deannexation of territory from a municipality that would create an unincorporated island where another local Act annexing the same territory into another municipality takes effect on the same date as the local Act providing for deannexation of such territory. (Code 1981, § 36-36-4, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 2; Ga. L. 2015, p. 1345, § 1/HB 432.)

The 2015 amendment, effective May 12, 2015, added subsection (c).

36-36-7. Effect of annexation upon county owned property or facilities; notice; acquisition of property or facilities by municipality.

Law reviews. — For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

JUDICIAL DECISIONS

Statute did not encompass easements owned by the county within city limits. — O.C.G.A. § 36-36-7, providing for the automatic transfer of ownership of roads and rights of way from counties to new municipalities, does not encompass property interests generally and did not operate to transfer detention pond easements owned by Fulton County to the City of Sandy Springs when the city incorporated; therefore, the county was required to maintain the ponds as long as the county owned the easements. Fulton County v. City of Sandy Springs, 295 Ga. 16, 757 S.E.2d 123 (2014).

36-36-10. Legislative intent.

JUDICIAL DECISIONS

Authority of municipality to annex during referendum process. — Trial court properly held that a municipality did not have the authority under O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly designated for annexation to another municipality, subject to a referendum, before the referendum took place; thus, a city was prohibited from attempting to annex property during the referendum process. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Municipality without authority to annex land during referendum process. — Municipality does not have the authority pursuant to O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly has designated for annexation to another municipality, subject to a referendum, before the referendum takes place. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Georgia General Assembly did not intend the alternative methods of annexation under O.C.G.A. § 36-36-10 to establish a system for municipalities to race the legislature to annex land that it already had designated for annexation under local law. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

ARTICLE 1A

ANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

36-36-16. Procedures for annexation; referendum.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

ARTICLE 2

ANNEXATION PURSUANT TO APPLICATION BY 100 PERCENT OF LANDOWNERS

36-36-20. "Contiguous area" defined.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

36-36-21. Annexation upon application of all land owners; filing of identification of annexed property with Department of Community Affairs and county governing authority; effect of annexation.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

No intent to race for annexation. — Georgia General Assembly did not intend the alternative methods of annexation under O.C.G.A. § 36-36-10 to establish a system for municipalities to race the legislature to annex land that it already had designated for annexation under local law. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

Municipality without authority to annex property during referendum process. — Trial court properly held that a municipality did not have the authority under O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly designated for annexation to another municipality, subject to a referendum, before the referendum took place; thus, a city was prohibited from attempting to annex property during the referendum process. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

36-36-23. Annexation by a municipal corporation into an adjoining county.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

ARTICLE 3

ANNEXATION PURSUANT TO APPLICATION BY OWNERS OF 60 PERCENT OF LAND AND 60 PERCENT OF ELECTORS

36-36-30. "Municipal corporation" defined.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

36-36-32. Annexation upon application of owners of 60 percent of the land and 60 percent of the resident electors generally; application and signature requirements.

JUDICIAL DECISIONS

The 60 percent method of annexation may be used in areas with no registered voters. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864 (1972).

36-36-40. Use of municipally owned utilities by residents of annexed territory.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

ARTICLE 4

ANNEXATION PURSUANT TO RESOLUTION AND REFERENDUM

36-36-51. Legislative declaration of policy.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

36-36-61. Restriction on applicability of article.

JUDICIAL DECISIONS

Cited in City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014).

ARTICLE 6

ANNEXATION OF UNINCORPORATED ISLANDS

36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services.

(a) The governing body of each municipal corporation of the state may annex to the existing corporate limits thereof all or any portion of unincorporated islands which are contiguous to the existing limits at

the time of such annexation upon compliance with the procedures set forth in this article and in accordance with the procedures provided in Article 1 of this chapter.

(b) Annexation of unincorporated islands as authorized in subsection (a) of this Code section shall be accomplished by ordinance at a regular meeting of the municipal governing authority within 30 days after written notice of intent to annex such property is mailed to the owner of such property at the last known address for such owner as it appears on the ad valorem tax records of the county in which such property is located. After the adoption of the annexation ordinance, an identification of the property annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located, in accordance with Code Section 36-36-3.

(c) Annexation of an unincorporated island as authorized by subsection (a) of this Code section, which unincorporated island directly abuts more than one municipality, shall be by the municipality which abuts the unincorporated island along the greatest percentage of its external boundary as provided in this Code section, unless otherwise agreed to by the affected municipalities.

(d) Annexations under this article shall be at the sole discretion of the governing body of each municipality.

(e) Municipal services to the annexed area shall be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation; provided, however, the extension of water and sewer services shall be according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots and subdivisions.

(f) The provisions of this article with regard to annexation of unincorporated islands is severable as to each city and to the annexation of each unincorporated island therein. (Code 1981, § 36-36-92, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 1995, p. 840, § 1; Ga. L. 2000, p. 164, § 12; Ga. L. 2015, p. 385, § 6-5/HB 252.)

The 2015 amendment, effective July 1, 2015, deleted the former last two sentences of subsection (f), which read: "The implementation of each annexation pursuant to this article is contingent upon preclearance of each annexation by the U.S. Justice Department pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c). Any city annexing an unincorporated island pursuant to this article shall submit such annexation to the U.S. Justice Department for preclearance not later than 90 days following the date of adoption of the annexation ordinance by the municipal governing authority."

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

CHAPTER 37

ACQUISITION AND DISPOSITION OF REAL AND PERSONAL PROPERTY GENERALLY

36-37-6. Disposition of municipal property generally.

(a) Except as otherwise provided in subsections (b) through (j) of this Code section, the governing authority of any municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such municipal corporation shall have the right to reject any and all bids or to cancel any proposed sale. The governing authority of the municipal corporation shall cause notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a general description of the property to be sold if the property is personal property or a legal description of the property to be sold if the property is real property. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened. The provisions of this subsection shall not apply to any transactions authorized in subsections (b) through (j) of this Code section.

(b) The governing authority of any municipal corporation is authorized to sell personal property belonging to the municipal corporation which has an estimated value of $500.00 or less and lots from any municipal cemetery, regardless of value, without regard to subsection (a) of this Code section. Such sales may be made in the open market without advertisement and without the acceptance of bids. The estima-

tion of the value of any such personal property to be sold shall be in the sole and absolute discretion of the governing authorities of the municipal corporation or their designated agent.

(c) Nothing in this Code section shall prevent a municipal corporation from trading or exchanging real property belonging to the municipal corporation for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the municipal corporation; provided, however, that within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the municipal corporation once a week for four weeks. The value of both the property belonging to the municipal corporation and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said municipal corporation.

(d) The governing authority of any municipal corporation is authorized to sell real property in established municipal industrial parks or in municipally designated industrial development areas for industrial development purposes without regard to subsection (a) or (b) of this Code section.

(e)(1) This Code section shall not apply to any municipal corporation which has a municipal charter provision setting forth procedures for the sale of municipal property and existing as of January 1, 1976, so long as such charter provision thereafter remains unchanged and as long as such charter provision contains the minimum notice requirements as set forth in subsection (a) of this Code section.

(2) This Code section shall not apply to the disposal of property:

(A) Which is acquired by deed of gift, will, or donation and is subject to such conditions as may be specified in the instrument giving or donating the property;

(B) Which is received from the United States government or from this state pursuant to a program which imposes conditions on the disposal of such property;

(C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the "Urban Redevelopment Law," or a homesteading program;

(D) Which is sold or transferred to another governing authority or government agency for public purposes; or

(E) Which is no longer needed for public road purposes and which is disposed of pursuant to Code Section 32-7-4.

(f) Notwithstanding any provision of this Code section or of any other law or any ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell real property within its corporate limits for museum purposes to either a public authority or a nonprofit corporation which is classified as a public foundation (not a private foundation) under the United States Internal Revenue Code, for the purpose of building, erecting, and operating thereon a museum or facility for the development or practice of the arts. Such sale may be made in the open market or by direct negotiations without advertisement and without the acceptance of bids. The estimation of the value of any property to be sold shall be in the sole and absolute discretion of the governing authority of the municipality or its designated agent; provided, however, that nothing shall prevent a municipality from trading or swapping property with another property owner if such trade or swap is deemed to be in the best interest of the municipality.

(g) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell and convey parcels of narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(h) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any municipal corporation determines that the establishment of a facility of the state or one of its authorities or other instrumentalities or of a bona fide nonprofit resource conservation and development council would be of benefit to the municipal corporation, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such municipal corporation may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities or to a bona fide nonprofit resource conservation and development council and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(i)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any municipality has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such municipality thereafter determines that all or any part of the property or any interest therein is no longer needed for such purposes because of changed conditions, that municipality is authorized to dispose of such property or interest therein as provided in this subsection.

(3) In disposing of property, as authorized under this subsection, the municipality shall notify the owner of such property at the time of its acquisition or, if the tract from which the municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the municipality acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if such owner's address is unknown; and such owner shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the municipality where the property is located.

(4) When an entire parcel acquired by the municipality or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the municipality decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the municipality shall proceed to sell such property as provided in subsection (a) of this Code section. The municipality shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(j)(1) As used in this subsection, the term:

(A) "Conservation easement" shall have the same meaning as set forth in Code Section 44-10-2.

(B) "Holder" shall have the same meaning as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, whenever the governing authority of any municipal corporation determines that the establishment of a conservation easement would be of benefit to the municipal corporation and to its citizens, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement may not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain.

(k)(1) Notwithstanding any provision of this Code section or any other law to the contrary, the General Assembly by local Act may authorize the governing authority of any municipal corporation to lease or enter into a contract for a valuable consideration for the operation and management, and renewals and extensions thereof, of any real or personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or other like property used primarily for recreational purposes for a period not to exceed five years to a nonprofit corporation which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant to use and operate the property for annual regional fair purposes or to continue the recreational purpose for which the property was formerly used and intended on a nondiscriminatory basis for the use and benefit of all citizens of the community; provided, however, that nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or that would cause the divesting of title to property dedicated to public use and not subsequently abandoned; and provided further, that the lessee or contractee under a management contract shall not mortgage or pledge the property as security for any debt or incur any encumbrance that could result in a lien or claim of lien against the property. The lease or management contract may provide for options to renew such lease or management contract for not more than three renewal periods and each such renewal period shall not be greater than the original length of such lease or management contract. As a condition of any lease or management contract, the lessee or contractee shall provide and maintain in force and effect throughout the term of such lease or management contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the

municipality as a named insured; shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of such person while on the property; and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by such person. As an additional condition of any such lease or management contract, the lessee or contractee shall provide to and maintain with the municipality a current copy of the liability insurance policy, including any changes in such policy or coverages as such changes occur, and shall provide proof monthly in writing to the municipality that the lessee or contractee has in force and effect the liability insurance required by this paragraph which the municipality shall retain on file. As a further condition of any lease or management contract, the lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvements to such property. When the lessee or contractee charges any person to enter or go upon the land for the purpose of attending the annual regional fair or for attending or participating in recreational purposes, the consideration received by the municipal corporation for the lease or management contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(2) Any governing authority entering into a lease as provided in paragraph (1) of this subsection shall have the right unilaterally to terminate such lease after giving three months' notice of its intention to do so.

(3) Any lease entered into as provided in paragraph (1) of this subsection shall be automatically terminated upon conviction of the lessee or contractee for any offense involving the conduct of unlawful activity. In such event, any improvements to the property made by the lessee shall be forfeited. The municipality shall not be liable in any manner or subject to suit for any indebtedness or other obligations of the lessee or contractee associated with any such improvements to the property and shall take such improvements free and clear of any such indebtedness or other obligations.

(l)(1) Where not otherwise authorized by its charter or other applicable law, the governing authority of any municipal corporation may lease or enter into a contract for valuable consideration for the use, operation, or management of any real or personal property of the municipal corporation pursuant to the power granted by this subsection. The authority of any municipal corporation granted pursuant to its charter or other applicable law to enter into leases or contracts for the use, operation, or management of any real or personal property of

the municipal corporation shall not be affected by this subsection and it shall not apply to any contracts or leases entered into pursuant to such authority. Where a municipal charter or other applicable law provides no authorization for leasing or contracting for the use, operation, or management of any real or personal property of the municipal corporation and this subsection is to be used as authorization for that purpose, the following shall apply:

(A) Any lease or contract for the use, operation, or management of any real or personal property for longer than 30 days shall be by sealed bids or by auction as provided in subsection (a) of this Code section. Easements and licenses for the use of municipal property in connection with construction projects of a municipal corporation shall be exempt from this subparagraph, provided that their term is less than one year;

(B) Nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or shall cause the divesting of title to property dedicated to public use and not subsequently abandoned; and

(C) The lessee or contractee shall not mortgage or pledge the property, lease or contract the property as security for any debt, or incur any encumbrance that could result in a lien or claim of lien against the property, lease, or contract.

(2) Any lease or contract for the use, operation, or management of any real or personal property entered into pursuant to this subsection and for longer than 30 days shall contain the following terms:

(A) The lessee or contractee shall provide and maintain in force in effect throughout the term of such lease or contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured;

(B) The lessee or contractee shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of any person while on the property and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by any person; and

(C) The lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvement to such property.

(3)(A) The initial term of a lease or contract for the use of real property entered into pursuant to this subsection shall be no longer

than five years and there may be one renewal period of no longer than five years, after which the lease or contract shall again be subject to sealed bids or auction.

(B) When the lessee or contractee charges any person to enter or go upon the real property for recreational purposes, the consideration received by the municipal corporation for the lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(C) Where real property is leased pursuant to this Code section for the erection of telecommunications towers, the initial term of a lease or contract for the use of such real property shall be no longer than ten years and there may be one renewal period of no longer than ten years, after which the lease or contract shall again be subject to sealed bids or auction; provided, however, that such lease shall also include provisions for the removal of the telecommunications tower structure.

(4) Where this subsection is applicable, it shall apply to any lease or contract entered into or renewed on or after July 1, 2011. This subsection shall not affect any provisions of subsection (k) of this Code section.

(5) Nothing contained in this Code section shall be construed so as to expand the powers of eminent domain or to otherwise provide for additional eminent domain authority for any municipal corporation. The ability for a governing authority of a municipal corporation to exercise eminent domain shall be subject to the limitations enumerated in Chapter 2 of Title 22 and the Georgia Constitution.

(m) Notwithstanding any other provision of law to the contrary, a city may exchange property dedicated as a city park with an institution owning property in or abutting a federal National Historic Site for use in connection with such property, provided that the city receives property in fee simple that is of equal or greater acreage as the city property exchanged and that the city immediately dedicates the property as a public park. (Code 1933, § 69-318, enacted by Ga. L. 1976, p. 350, § 1; Ga. L. 1978, p. 890, §§ 1, 2; Ga. L. 1981, p. 831, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1987, p. 1051, § 2; Ga. L. 1989, p. 1418, § 1; Ga. L. 1990, p. 877, § 2; Ga. L. 1992, p. 1348, § 2; Ga. L. 1993, p. 795, § 1; Ga. L. 2001, p. 863, § 1; Ga. L. 2004, p. 1076, § 1; Ga. L. 2005, p. 60, § 36/HB 95; Ga. L. 2010, p. 1078, § 2/SB 390; Ga. L. 2011, p. 240, § 3A/HB 280; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 647, § 1A/HB 189.)

The 2013 amendment, effective July 1, 2013, added subsection (m).

CHAPTER 42

DOWNTOWN DEVELOPMENT AUTHORITIES

36-42-8. Powers of authorities generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects, contracts with respect to the use of projects, and agreements to join or cooperate with an urban residential finance authority, created by the municipal corporation within which the downtown development area is located pursuant to the provisions of Chapter 41 of this title, in the exercise, either jointly or otherwise, of any or all of its powers for the purpose of financing, including the issuance of revenue bonds, notes, or other obligations of the authorities, planning, undertaking, owning, constructing, operating, or contracting with respect to any projects located within the downtown development area or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds, notes, or other obligations of the authority or any other funds of the authority, or

from any contributions or loans by persons, corporations, partnerships (whether limited or general), or other entities, all of which the authority is authorized to receive, accept, and use;

(6) To borrow money to further or carry out its public purpose and to execute revenue bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the authority, to evidence and to provide security for such borrowing;

(7) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning the proceeds thereof to pay, all or any part of the cost of any project and otherwise to further or carry out the public purpose of the authority and to pay all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(8) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the authority's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(9) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the authority;

(10) To contract for any period, not exceeding 50 years, with the State of Georgia, state institutions, or any municipal corporation or county of this state for the use by the authority of any facilities or services of the state or any such state institution, municipal corporation, or county, or for the use by any state institution or any municipal corporation or county of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such political subdivision with which the authority contracts are authorized by law to undertake;

(11) To extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs of any project or any part of the costs of any project, which credit or loans may be evidenced or secured by loan agreements, notes,

mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the authority may deem necessary or desirable;

(12) As security for repayment of any revenue bonds, notes, or other obligations of the authority, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority (including, but not limited to, real property, fixtures, personal property, and revenues or other funds) and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes, or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The State of Georgia, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and use the proceeds of any tax levied by a municipal corporation to pay the costs of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(14) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(15) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or

make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to the best advantage of the authority and the public purpose thereof;

(16) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(17) To appoint, select, and employ engineers, surveyors, architects, urban or city planners, fiscal agents, attorneys, and others and to fix their compensation and pay their expenses;

(18) To encourage and promote the improvement and revitalization of the downtown development area and to make, contract for, or otherwise cause to be made long-range plans or proposals for the downtown development area in cooperation with the municipal corporation within which the downtown development area is located;

(19) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(20) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(21) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(22) To serve as an urban redevelopment agency pursuant to Chapter 61 of this title;

(23) To contract with a municipal corporation to carry out supplemental services in a city business improvement district established pursuant to Chapter 43 of this title; and

(24) To serve as a redevelopment agency pursuant to Chapter 44 of this title.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter; and no such power limits or restricts any other power of the authority except that, notwithstanding any other provision of this chapter, no authority described in this

chapter shall be granted the power of eminent domain. (Ga. L. 1981, p. 1744, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 902, § 1; Ga. L. 1988, p. 1463, § 2; Ga. L. 1992, p. 2533, § 3; Ga. L. 2006, p. 39, § 19/HB 1313; Ga. L. 2013, p. 746, § 1/SB 242.)

The 2013 amendment, effective May 6, 2013, added "or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation" at the end of paragraph (a)(3).

36-42-17. Priority of liens regarding assessments for downtown development authorities.

A lien for any assessment under Code Section 36-42-16 that relates to any project under subparagraph (B) of paragraph (6) of Code Section 36-42-3 shall have the same priority as municipal liens under paragraph (4) of subsection (b) and subparagraph (g)(2)(B) of Code Section 48-2-56. (Code 1981, § 36-42-17, enacted by Ga. L. 2015, p. 1329, § 1/SB 4.)

Effective date. — This Code section became effective July 1, 2015.

CHAPTER 44

REDEVELOPMENT POWERS

Sec.
36-44-3. Definitions.

36-44-2. Legislative findings and purpose.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-44-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem property taxes" means all ad valorem property taxes levied by each political subdivision and each county and independent board of education consenting to the inclusion of that

board of education's property taxes as being applicable to a tax allocation district as provided by Code Section 36-44-9, except:

(A) Those ad valorem property taxes levied to repay bonded indebtedness;

(B) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on personal property or on motor vehicles; and

(C) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on the assessed value of property owned by public utilities and railroad companies, as determined pursuant to the provisions of Chapter 5 of Title 48.

(2) "Area of operation" means, in the case of a municipality or its redevelopment agency, the territory lying within the corporate limits of such municipality; in the case of a county or its redevelopment agency, the territory lying within the unincorporated area of the county; and, in the case of a consolidated government or its redevelopment agency, the area lying within the territorial boundaries of the consolidated government. "Area of operation" may also mean the combined areas of operation of political subdivisions which participate in the creation of a common redevelopment agency to serve such participating political subdivisions as provided in subsection (d) of Code Section 36-44-4.

(3) "Local legislative body" means the official or body in which the legislative powers of a political subdivision are vested.

(4) "Political subdivision" means any county, municipality, or consolidated government of this state.

(5) "Redevelopment" means any activity, project, or service necessary or incidental to achieving the development or revitalization of a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan or the preservation or improvement of historical or natural assets within a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan. Without limiting the generality of the foregoing, redevelopment may include any one or more of the following:

(A) The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(B) The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(C) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public or private housing;

(D) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services;

(E) The identification, preservation, renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or restoration of buildings or sites which are of historical significance;

(F) The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;

(G) The construction, installation, preservation, renovation, rehabilitation, reconstruction, restoration, alteration, improvement, and maintenance of public art and arts and cultural facilities;

(H) The development, construction, reconstruction, repair, demolition, alteration, or expansion of structures, equipment, and facilities for mass transit;

(I) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of telecommunication infrastructure;

(J) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of facilities for the improvement of pedestrian access and safety;

(K) Improving or increasing the value of property; and

(L) The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

(6) "Redevelopment agency" means the local legislative body of a political subdivision or a public body corporate and politic created as the redevelopment agency of the political subdivision or an existing public body corporate and politic designated as the redevelopment agency of the political subdivision pursuant to Code Section 36-44-4.

(7) "Redevelopment area" means an urbanized area as determined by current data from the United States Bureau of the Census or an area presently served by sewer that qualifies as a "blighted or distressed area," a "deteriorating area," or an "area with inadequate infrastructure," as follows:

(A) A "blighted or distressed area" is an area that is experiencing one or more conditions of blight as evidenced by:

(i) The presence of structures, buildings, or improvements that by reason of dilapidation; deterioration; age; obsolescence; inadequate provision for ventilation, light, air, sanitation, or open space; overcrowding; conditions which endanger life or property by fire or other causes; or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, high unemployment, juvenile delinquency, or crime and are detrimental to the public health, safety, morals, or welfare;

(ii) The presence of a predominant number of substandard, vacant, deteriorated, or deteriorating structures; the predominance of a defective or inadequate street layout or transportation facilities; or faulty lot layout in relation to size, accessibility, or usefulness;

(iii) Evidence of pervasive poverty, defined as being greater than 10 percent of the population in the area as determined by current data from the United States Bureau of the Census, and an unemployment rate that is 10 percent higher than the state average;

(iv) Adverse effects of airport or transportation related noise or environmental contamination or degradation or other adverse environmental factors that the political subdivision has determined to be impairing the redevelopment of the area; or

(v) The existence of conditions through any combination of the foregoing that substantially impair the sound growth of the community and retard the provision of housing accommodations or employment opportunities;

(B) A "deteriorating area" is an area that is experiencing physical or economic decline or stagnation as evidenced by two or more of the following:

(i) The presence of a substantial number of structures or buildings that are 40 years old or older and have no historic significance;

(ii) High commercial or residential vacancies compared to the political subdivision as a whole;

(iii) The predominance of structures or buildings of relatively low value compared to the value of structures or buildings in the surrounding vicinity or significantly slower growth in the property tax digest than is occurring in the political subdivision as a whole;

(iv) Declining or stagnant rents or sales prices compared to the political subdivision as a whole;

(v) In areas where housing exists at present or is determined by the political subdivision to be appropriate after redevelopment, there exists a shortage of safe, decent housing that is not substandard and that is affordable for persons of low and moderate income; or

(vi) Deteriorating or inadequate utility, transportation, or transit infrastructure; and

(C) An "area with inadequate infrastructure" means an area characterized by:

(i) Deteriorating or inadequate parking, roadways, bridges, pedestrian access, or public transportation or transit facilities incapable of handling the volume of traffic into or through the area, either at present or following redevelopment; or

(ii) Deteriorating or inadequate utility infrastructure either at present or following redevelopment.

(8) "Redevelopment costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs may include any one or more of the following:

(A) Capital costs, including the costs incurred or estimated to be incurred for the construction of public works or improvements, new buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of existing buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under this chapter occurring during the estimated period of construction of any project with respect to which any capital costs within the meaning of subparagraph (A) of this paragraph are financed in whole or in part by such obligations and for a period not to exceed 42 months after completion of any such construction and including reasonable reserves related thereto and all principal and interest paid to holders of evidences of indebtedness issued to pay

for other redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) Professional service costs, including those costs incurred for architectural, planning, engineering, financial, marketing, and legal advice and services;

(D) Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan;

(E) Relocation costs as authorized by a redevelopment plan for persons or businesses displaced by the implementation of a redevelopment plan, including but not limited to those relocation payments made following condemnation under Chapter 4 of Title 22, "The Georgia Relocation Assistance and Land Acquisition Policy Act";

(F) Organizational costs, including the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans;

(G) Payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any capital costs incurred because of redevelopment activity; provided, however, that any such payments to a political subdivision or board of education shall not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education; and

(H) Real property assembly costs.

(9) "Redevelopment plan" means a written plan of redevelopment for a redevelopment area or a designated portion thereof which:

(A) Specifies the boundaries of the proposed redevelopment area;

(B) Explains the grounds for a finding by the local legislative body that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or that the redevelopment area includes one or more natural, historical, or cultural assets which have not been adequately preserved, protected, or improved and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan;

(C) Explains the proposed uses after redevelopment of real property within the redevelopment area;

(D) Describes any redevelopment projects within the redevelopment area proposed to be authorized by the redevelopment plan, estimates the cost thereof, and explains the proposed method of financing such projects;

(E) Describes any contracts, agreements, or other instruments creating an obligation for more than one year which are proposed to be entered into by the political subdivision or its redevelopment agency or both for the purpose of implementing the redevelopment plan;

(F) Describes the type of relocation payments proposed to be authorized by the redevelopment plan;

(G) Includes a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the political subdivision or explains any exceptions thereto;

(H) Estimates redevelopment costs to be incurred or made during the course of implementing the redevelopment plan;

(I) Recites the last known assessed valuation of the redevelopment area and the estimated assessed valuation after redevelopment;

(J) Provides that property which is to be redeveloped under the plan and which is either designated as a historic property under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," or is listed on or has been determined by any federal agency to be eligible for listing on the National Register of Historic Places will not be:

(i) Substantially altered in any way inconsistent with technical standards for rehabilitation; or

(ii) Demolished unless feasibility for reuse has been evaluated based on technical standards for the review of historic preservation projects,

which technical standards for rehabilitation and review shall be those used by the state historic preservation officer, although nothing in this subparagraph shall be construed to require approval of a redevelopment plan or any part thereof by the state historic preservation officer;

(K) Specifies the proposed effective date for the creation of the tax allocation district and the proposed termination date;

(L) Contains a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property in the proposed tax allocation district;

(M) Specifies the estimated tax allocation increment base of the proposed tax allocation district;

(N) Specifies ad valorem property taxes for computing tax allocation increments determined in accordance with Code Section 36-44-9 and supported by any resolution required under paragraph (3) of Code Section 36-44-8;

(O) Specifies the amount of the proposed tax allocation bond issue or issues and the term and assumed rate of interest applicable thereto;

(P) Estimates positive tax allocation increments for the period covered by the term of the proposed tax allocation bonds;

(Q) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(R) If the plan proposes to include in the tax allocation increment ad valorem taxes levied by a board of education, the plan shall contain a school system impact analysis addressing the financial and operational impact on the school system of the proposed redevelopment, including but not limited to an estimate of the number of net new public school students that could be anticipated as redevelopment occurs; the location of school facilities within the proposed redevelopment area; an estimate of educational special purpose local option sales taxes projected to be generated by the proposed redevelopment, if any; and a projection of the average value of residential properties resulting from redevelopment compared to current property values in the redevelopment area; and

(S) Includes such other information as may be required by resolution of the political subdivision whose area of operation includes the proposed redevelopment area.

(10) "Resolution" means a resolution or ordinance by which a local legislative body takes official legislative action and any duly adopted amendment thereto.

(11) "Special fund" means the fund provided for in subsection (c) of Code Section 36-44-11.

(12) "Tax allocation bonds" means one or more series of bonds, notes, or other obligations issued by a political subdivision to finance, wholly or partly, redevelopment costs within a tax allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20. Tax allocation bonds shall not constitute debt within the meaning of Article IX, Section V of the Constitution.

(13) "Tax allocation district" means a contiguous geographic area within a redevelopment area which is defined and created by resolution of the local legislative body of a political subdivision pursuant to subparagraph (B) of paragraph (3) of Code Section 36-44-8 for the purpose of issuing tax allocation bonds to finance, wholly or partly, redevelopment costs within the area.

(14) "Tax allocation increment" means that amount obtained by multiplying the total ad valorem property taxes, determined as provided in Code Section 36-44-9, levied within a tax allocation district in any year by a fraction having a numerator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district minus the tax allocation increment base and a denominator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district. In any year, a tax allocation increment is "positive" if the tax allocation increment base is less than that year's taxable value of all taxable property subject to ad valorem property taxes and "negative" if such base exceeds such taxable value.

(15) "Tax allocation increment base" means the taxable value of all taxable property subject to ad valorem property taxes, as certified by the state revenue commissioner, located within a tax allocation district on the effective date such district is created pursuant to Code Section 36-44-8.

(16) "Taxable property" means all real and personal property subject to ad valorem taxation by a political subdivision, including property subject to local ad valorem taxation for educational purposes.

(17) "Taxable value" means the current assessed value of taxable property as shown on the tax digest of the county in which the property is located. (Code 1981, § 36-44-3, enacted by Ga. L. 2009, p.

158, § 2/HB 63; Ga. L. 2010, p. 878, § 36/HB 1387; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 141, § 36/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "United States Bureau of the Census" for "U.S. Bureau of the Census" in paragraph (7); and revised punctuation in paragraph (10).

36-44-9. Computing tax allocation increments; property tax included; use of tax funds.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

Provisions Applicable to Counties and Municipal Corporations

CHAPTER 60

GENERAL PROVISIONS

36-60-3. Restriction of adult bookstores and movie houses to certain areas.

Law reviews. — For article, "Evil Angel Eulogy: Reflections on the Passing of the Obscenity Defense in Copyright," see 20 J. Intell. Prop. L. 209 (2013).

36-60-6. Utilization of federal work authorization program; "employee" defined; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.

(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(b) For purposes of this Code section, the term "employee" shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.

(c) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person engaged in a profession or business required to be licensed by the state under Title 43, the person shall provide evidence of such licensure to the appropriate agency of the county or municipal corporation that issues business licenses. No business license, occupational tax certificate, or other document required to operate a business shall be issued to any person subject to licensure under Title 43 without evidence of such licensure being presented.

(d)(1) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to

employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(2) Upon satisfying the requirements of paragraph (1) of this subsection, for all subsequent renewals of a business license, occupation tax certificate, or other document, the person shall submit to the county or municipality his or her federal work authorization user number or assert that he or she is exempt from this requirement, provided that the federal work authorization user number provided for the renewal is the same federal work authorization user number as provided in the affidavit under paragraph (1) of this subsection. If the federal work authorization user number is different than the federal work authorization user number provided in the affidavit under paragraph (1) of this subsection, then the person shall be subject to the requirements of subsection (g) of this Code section.

(e) Counties and municipal corporations subject to the requirements of this Code section shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this Code section. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.

(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which shall be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.

(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.

(h) Any person presenting false or misleading evidence of state licensure shall be guilty of a misdemeanor. Any government official or employee knowingly acting in violation of this Code section shall be guilty of a misdemeanor; provided, however, that any person who

knowingly submits a false or misleading affidavit pursuant to this Code section shall be guilty of submitting a false document in violation of Code Section 16-10-20. It shall be a defense to a violation of this Code section that such person acted in good faith and made a reasonable attempt to comply with the requirements of this Code section.

(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section. (Code 1981, § 36-60-6, enacted by Ga. L. 1992, p. 1553, § 1; Ga. L. 2011, p. 794, § 12/HB 87; Ga. L. 2013, p. 111, § 4/SB 160.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of subsection (d) as paragraph (d)(1); deleted "or renews" following "corporation issues" near the beginning of the first sentence of paragraph (d)(1); added paragraph (d)(2); substituted the present provisions of subsection (e) for the former provisions, which read: "Beginning December 31, 2012, and annually thereafter, any county or municipal corporation issuing or renewing a business license, occupational tax certificate, or other document required to operate a business shall provide to the Department of Audits and Accounts a report demonstrating that such county or municipality is acting in compliance with the provisions of this Code section. This annual report shall identify each license or certificate issued by the agency in the preceding 12 months and include the name of the person and business issued a license or other document and his or her federally assigned employment eligibility verification system user number as provided in the affidavit submitted at the time of application. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies."; and substituted "affidavit which shall" for "affidavit which may" in the middle of the first sentence of subsection (f).

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

36-60-11. Attorney General to receive a copy of any submission to the United States Department of Justice pursuant to federal Voting Rights Act of 1965.

Reserved. Repealed by Ga. L. 2015, p. 385, § 6-6/HB 252.

Editor's notes. — This Code section was based on Code 1981, § 36-60-11, enacted by Ga. L. 1984, p. 1432, § 1.

Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-60-13. Multiyear lease, purchase, or lease-purchase contracts.

(a) Each county or municipality in this state shall be authorized to enter into multiyear lease, purchase, or lease-purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar or fiscal year in which it was executed and at the close of each succeeding calendar or fiscal year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(3) The contract shall state the total obligation of the county or municipality for the calendar or fiscal year of execution and shall further state the total obligation which will be incurred in each calendar or fiscal year renewal term, if renewed; and

(4) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(b) In addition to the provisions enumerated in subsection (a) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the county or municipality.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the county or municipality only for those sums payable during the calendar or fiscal year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar or fiscal year renewal term.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar or fiscal year of execution or, in the event of a renewal, beyond the calendar or fiscal year of such renewal.

(e) No contract developed and executed pursuant to this Code section may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality.

(f) No contract developed and executed pursuant to this Code section may be delivered if the real or personal property being so financed has been the subject of a referendum which failed to receive the approval of the voters of the county or municipality within the immediately preceding four calendar years, unless such real or personal property is required to be financed pursuant to a federal or state court order, or imminent threat thereof, as certified by the governing authority of the county or municipality.

(g) No contract developed and executed pursuant to this Code section with respect to the acquisition of real property may be delivered unless a public hearing has been held by the county or municipality after two weeks' notice published in a newspaper of general circulation within the county or municipality.

(h)(1) On or after July 1, 2000, no contract developed and executed or renewed, refinanced, or restructured pursuant to this Code section with respect to real property may be delivered if the lesser of either of the following is exceeded:

(A) The average annual payments on the aggregate of all such outstanding contracts exceed 7.5 percent of the governmental fund revenues of the county or municipality for the calendar year preceding the delivery of such contract plus any available special county 1 percent sales and use tax proceeds collected pursuant to Code Section 48-8-111; or

(B) The outstanding principal balance on the aggregate of all such outstanding contracts exceeds $25 million; provided, however,

that with respect to any county or municipality in which, prior to July 1, 2000, the outstanding principal balance on the aggregate of outstanding contracts exceeds $25 million, such outstanding contracts may be renewed, refinanced, or restructured, but no new contracts shall be developed and executed until the outstanding principal balance on such outstanding contracts has been reduced so that the $25 million limitation of this subparagraph, or the limitation in subparagraph (A) of this paragraph, whichever is lower, is not exceeded.

(2) Paragraph (1) of this subsection shall not apply to contracts developed and executed or renewed, refinanced, or restructured pursuant to this Code section which are for projects or facilities:

(A) For the housing of court services, where any other state law or laws authorize the project or facility to be financed and paid for from the collection of fines rather than from tax revenues; or

(B) Which have been previously approved in the most recent referendum calling for the levy of a special county 1 percent sales and use tax pursuant to Part 1 of Article 3 of Chapter 8 of Title 48.

(i) Any such contract may provide for the payment by the county or municipality of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(j) Nothing in this Code section shall restrict counties or municipalities from executing reasonable contracts arising out of their proprietary functions. (Code 1981, § 36-60-13, enacted by Ga. L. 1988, p. 1954, § 1; Ga. L. 1996, p. 441, § 1; Ga. L. 2000, p. 1443, § 1; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 272, § 1/HB 473.)

The 2013 amendment, effective July 1, 2013, inserted "or fiscal" throughout subsections (a), (c), and (d).

36-60-24. Sale or use or explosion of consumer fireworks products.

(a) The governing authority of a county or municipal corporation shall not prohibit the sale or use or explosion of consumer fireworks or products or services which are lawful under subsection (b) of Code Section 25-10-1, unless such prohibition is expressly authorized by general law.

(b) If the sale of a product or service is regulated by Chapter 10 of Title 25, the governing authority of a county or municipal corporation shall not enact additional regulation of the sale or use or explosion of

such product or service, unless such additional regulation is expressly authorized by general law.

(c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may provide for permits or licenses for the sale or use of consumer fireworks as provided for under subsection (c) of Code Section 25-10-5.1.

(d) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county may further regulate the sale of consumer fireworks from temporary consumer fireworks retail sales stands.

(e) The governing authority of a county shall not unreasonably delay or deny an application for a temporary consumer fireworks retail sales stand.

(f) For purposes of this subsection, the terms "consumer fireworks" and "consumer fireworks retail sales stand" shall have the same meanings as provided in Code Section 25-10-1.

(g) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal corporation in violation of this Code section is void. (Code 1981, § 36-60-24, enacted by Ga. L. 2006, p. 544, § 1/HB 304; Ga. L. 2015, p. 274, § 8/HB 110.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "or use or explosion of consumer fireworks or products or services which" for "of products or services which products or services" in the middle and substituted "general law" for "the general law of the state" at the end; in subsection (b), substituted "Chapter 10 of Title 25" for "subsection (b) of Code Section 25-10-1" near the beginning and inserted "or use or explosion" near the middle; added subsections (c) through (f); and redesignated former subsection (c) as present subsection (g).

36-60-25. Certificates of public necessity and convenience and medallions for taxicabs.

(a) Each county and municipal corporation may require the owner or operator of a taxicab to obtain a certificate of public necessity and convenience or medallion in order to operate such taxicab within the unincorporated areas of the county or within the corporate limits of the municipal corporation, respectively, and may exercise its authority under Code Section 48-13-9 to require such owners or operators to pay a regulatory fee to the county or municipal corporation. The General Assembly finds and declares that any county or municipality exercising the powers granted in this Code section is legitimately concerned with the qualifications and records of drivers of taxicabs; with the location, accessibility, and insured state of companies operating taxicabs; and with the safety and comfort of taxicabs. Without limitation, each such county or municipality may exercise the powers granted in this Code

section by ordinance to the same extent as the ordinances reviewed by the Georgia Court of Appeals in the case of Hadley v. City of Atlanta, 232 Ga. App. 871, 875 (1998), and each certificate of public convenience and necessity issued under those ordinances shall remain in full force and effect.

(b) Each certificate of public necessity and convenience or medallion issued at any time by a county or municipal corporation shall be fully transferable pursuant to a purchase, gift, bequest, or acquisition of the stock or assets of a corporation to any person otherwise meeting the requirements of the applicable local ordinance. Each such certificate of public necessity and convenience or medallion may be used as collateral to secure a loan and each lending institution making such a loan shall have all rights of secured parties with respect to such loan.

(c) Counties and municipalities which have adopted and have valid ordinances as of July 1, 2014, requiring taxicabs to have certificates of public necessity and convenience or medallions to operate within each such county or municipality may continue to require such certificates or medallions. Except as otherwise provided in this subsection, no county or municipality shall enact, adopt, or enforce any ordinance or regulation which requires taxicabs to have certificates of public necessity and convenience or medallions to operate within such county or municipality.

(d) No person shall operate a taxicab for the purpose of carrying or transporting passengers for hire unless such person has a for-hire license endorsement or private background check certification pursuant to Code Section 40-5-39. Counties and municipalities shall not impose further licensing requirements or background checks on such persons to operate taxicabs in their jurisdictions.

(e) As used in this subsection, the term "stage" means to stop, park, or otherwise place a vehicle for hire, other than a taxicab, in the loading or curbside area of any business for the purpose of soliciting a fare when such vehicle is not engaged in a prearranged round-trip or prearranged one-way fare. It shall be illegal to stage limousine carriers, as defined in paragraph (5) of Code Section 40-1-151, or ride share drivers, as defined in paragraph (3) of Code Section 40-1-190. A person who violates this subsection shall be guilty of a misdemeanor.

(f) No person shall operate a taxicab for the purpose of carrying or transporting passengers for hire unless such person maintains insurance from an insurance company licensed under Title 33, through a surplus line broker licensed under Title 33, or is qualified as a self-insurer pursuant to Code Section 33-34-5.1. (Code 1981, § 36-60-25, enacted by Ga. L. 2007, p. 677, § 1/HB 519; Ga. L. 2015, p. 1262, § 1/HB 225.)

The 2015 amendment, effective May 6, 2015, deleted "or vehicle for hire" following "taxicab" and deleted "and other vehicles for hire" following "taxicabs" throughout subsection (a); and added subsections (c) through (f).

CHAPTER 61

URBAN REDEVELOPMENT

36-61-2. Definitions.

As used in this chapter, the term:

(1) "Agency" or "urban redevelopment agency" means a public agency created by Code Section 36-61-18.

(2) "Area of operation" means the area within the corporate limits of the municipality or county and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated municipality or another county unless a resolution is adopted by the governing body of such other municipality or county declaring a need therefor.

(3) "Board" or "commission" means a board, commission, department, division, office, body, or other unit of the municipality or county.

(4) "Bonds" means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

(5) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(6) "County" means any county in this state.

(7) "Downtown development authority" means an authority created pursuant to Chapter 42 of this title.

(8) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Housing authority" means a housing authority created by and established pursuant to Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."

(10) "Local governing body" means the council or other legislative body charged with governing the municipality and the board of commissioners or governing authority of the county.

(11) "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(12) "Municipality" means any incorporated city or town in this state.

(13) "Obligee" includes any bondholder, agents, or trustees for any bondholders, or any lessor demising to the municipality or county property used in connection with an urban redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality or county.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(15) "Pocket of blight" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; high density of population and overcrowding; existence of conditions which endanger life or property by fire and other causes; or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and detrimental to the public health, safety, morals, or welfare. "Pocket of blight" also means an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures; predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other

improvements; tax or special assessment delinquency exceeding the fair value of the land; the existence of conditions which endanger life or property by fire and other causes; having development impaired by airport or transportation noise or other environmental hazards; or any combination of such factors, substantially impairs or arrests the sound growth of a municipality or county, retards the provisions of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(16) "Pocket of blight clearance and redevelopment" may include:

(A) Acquisition of a pocket of blight or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(17) "Public body" means the state or any municipality, county, board, commission, authority, district, housing authority, urban redevelopment agency, or other subdivision or public body of the state.

(18) "Real property" includes all lands, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(19) "Rehabilitation" or "conservation" may include the restoration and redevelopment of a pocket of blight or portion thereof, in accordance with an urban redevelopment plan, by:

(A) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(B) Acquisition of real property and rehabilitation or demolition and removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen or increase density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of pockets of blight or deterio-

ration, or to provide land for needed public facilities or improvements, including, but not limited to, surface transportation projects;

(C) Installation, construction, or reconstruction of streets, transit facilities and improvements, sidewalks, streetscapes, trails, bicycle facilities, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter; and

(D) The disposition of any property acquired in such urban redevelopment area, including sale, initial leasing or retention by the municipality or county itself, at its fair value for uses in accordance with the urban redevelopment plan.

(20) "Slum clearance and redevelopment" may include:

(A) Acquisition of a slum area or portion thereof;

(B) Rehabilitation or demolition and removal of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, transit facilities, sidewalks, streetscapes, trails, bicycle facilities, utilities, parks, playgrounds, and other public facilities and improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

(D) Making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality or county itself) at its fair value for uses in accordance with the urban redevelopment plan.

(21) "Sponsoring local government" means the municipality or county which approves and is, directly or indirectly, providing the greatest percentage of the public funding, exclusive of federal funding, for a surface transportation project.

(22) "Surface transportation project" means a project for public improvement and any related public facilities which is planned to impact 10,000 or more acres and at least ten transit miles within the area of operation of the sponsoring local government, including any related facilities, systems, parks, trails, streets, greenspace, and any other integrated public or private development features included within any adopted infrastructure or transportation plan, urban redevelopment plan, strategic implementation plan, redevelopment plan, workable programs, or comprehensive plans; provided that the location of such surface transportation project is wholly within a

county or counties that have approved a referendum pursuant to Section 24 of an Act creating the Metropolitan Atlanta Rapid Transit Authority, approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended; and provided, further, that the project is within one-half mile of a transportation/communications/utilities corridor, which has been designated by the local governing body on or before January 1, 2015, or within the boundaries of a tax allocation district authorized under the provisions of Chapter 44 of this title in effect as of January 1, 2015.

(23) "Urban redevelopment area" means a pocket of blight which the local governing body designates as appropriate for an urban redevelopment project.

(24) "Urban redevelopment plan" means a plan, as it exists from time to time, for an urban redevelopment project, which plan shall:

(A) Conform to the general plan for the municipality or county as a whole; and

(B) Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban redevelopment area; zoning and planning changes, if any; land uses; maximum densities; building requirements; and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(25) "Urban redevelopment project" may include undertakings or activities of a municipality or county in an urban redevelopment area for the elimination and for the prevention of the development or spread of pockets of blight and may involve pocket of blight clearance and redevelopment in an urban redevelopment area, rehabilitation or conservation in an urban redevelopment area, the implementation of public improvements, including, but not limited to, surface transportation projects, or any combination or part thereof, in accordance with an urban redevelopment plan. Although the power of eminent domain may not be exercised for the following purposes, such undertakings or activities may include:

(A) Acquisition, without regard to any requirement that the area be a pocket of blight, of air rights in an area consisting of lands and highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing and related facilities and uses designed for,

and limited primarily to, families and individuals of low or moderate income; and

(B) Construction of foundations and platforms necessary for the provision of air rights sites of housing and related facilities and uses designed for, and limited primarily to, families and individuals of low or moderate income or construction of foundations necessary for the provision of air rights sites for development of nonresidential facilities. (Ga. L. 1955, p. 354, § 19; Ga. L. 1963, p. 644, § 1; Ga. L. 1971, p. 445, §§ 3-5; Ga. L. 1976, p. 946, §§ 2, 3; Ga. L. 1982, p. 3, § 36; Ga. L. 1992, p. 2533, §§ 11, 12; Ga. L. 2015, p. 1318, § 1/HB 174; Ga. L. 2015, p. 1329, § 2/SB 4.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, throughout this Code section, substituted "pocket of blight" for "slum area", substituted "pockets of blight" for "slum" and "slums"; added paragraphs (15) and (16); redesignated former paragraphs (15) through (17) as present paragraphs (17) through (19), respectively; deleted former paragraphs (18) and (19), which read: "(18) 'Slum area' means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age, or obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; high density of population and overcrowding; existence of conditions which endanger life or property by fire and other causes; or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare. 'Slum area' also means an area which by reason of the presence of a substantial number of slum, deteriorated, or deteriorating structures; predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; the existence of conditions which endanger life or property by fire and other causes; by having development impaired by airport or transportation noise or by other environmental hazards; or any combination of such factors substantially impairs or arrests the sound growth of a municipality or county, retards the provisions of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

"(19) 'Slum clearance and redevelopment' may include:

"(A) Acquisition of a slum area or portion thereof;

"(B) Rehabilitation or demolition and removal of buildings and improvements;

"(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban redevelopment provisions of this chapter in accordance with the urban redevelopment plan; and

"(D) Making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality or county itself) at its fair value for uses in accordance with the urban redevelopment plan."; and substituted "pocket of blight" for "slum or blighted area" near the beginning of subparagraph (22)(A). The second 2015 amendment, effective July 1, 2015, in subparagraph (17)(B), inserted "or increase" near the middle and added "or improvements, including, but not limited to, surface transportation projects" at the end and inserted "transit facilities and improvements, sidewalks, streetscapes, trails, bicycle facilities," in the middle of subparagraph (17)(C); in subparagraph

(19)(C), inserted "transit facilities, sidewalks, streetscapes, trails, bicycle facilities," and inserted "other public facilities and"; added paragraph (20); redesignated former paragraphs (20), (21), and (22) as present paragraphs (22), (23), and (24), respectively; and in paragraph (24), in the introductory matter, inserted "the implementation of public improvements, including, but not limited to, surface transportation projects," near the middle, and substituted "for the following purposes" for "such purposes" near the end. See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2015, the amendment of paragraph (19) of this Code section by Ga. L. 2015, p. 1318, § 1/HB 174, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1329, § 2/SB 4, due to irreconcilable conflict.

Pursuant to Code Section 28-9-5, in 2015, former paragraphs (19) through (24) were redesignated as present paragraphs (20) through (25), respectively, to maintain alphabetical order.

36-61-3. Legislative findings and declaration of necessity.

(a) It is found and declared that there exist in municipalities and counties of this state pockets of blight, as defined in paragraph (15) of Code Section 36-61-2, which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of this state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities and counties, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of pockets of blight is a matter of state policy and state concern, in order that this state and its municipalities and counties shall not continue to be endangered by areas which are local centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of this state and its municipalities and counties, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(b) It is further found and declared that certain pockets of blight or portions thereof may require acquisition, clearance, and disposition, subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that the other areas or portions thereof, through the means provided in this chapter, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated in subsection (a) of this Code section may be eliminated, remedied, or prevented and that, to the extent that is feasible, salvable pockets of blight should be conserved and rehabilitated through voluntary action and the regulatory process.

(c) It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised. The necessity, in the public interest, for the provisions enacted in this chapter is declared as a matter of legislative determination. (Ga. L. 1955, p. 354, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 1318, § 2/HB 174.)

The 2015 amendment, effective July 1, 2016, substituted "pockets of blight" for "slum areas" throughout subsections (a) and (b); and, in subsection (a), substituted "paragraph (15)" for "paragraph (18)" near the beginning, substituted "pockets of blight" for "slums" near the end, and substituted "this state" for "the state" twice near the end.

36-61-4. Encouragement of private enterprise.

(a) A municipality or county, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, to the rehabilitation or redevelopment of the urban redevelopment area by private enterprise. A municipality or county shall give consideration to this objective in exercising its powers under this chapter, including: the formulation of a workable program; the approval of urban redevelopment plans consistent with the general plan for the municipality or county; the adoption and enforcement of ordinances as provided for in Code Section 36-61-11; the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

(b) Notwithstanding anything in this chapter or other provisions of law to the contrary, and in order to give effect to the encouragement of private enterprise contemplated in this Code section, the following shall apply to contracts and agreements for surface transportation projects entered into pursuant to this chapter:

(1) In addition to other methods of procurement authorized by law, the sponsoring local government, urban redevelopment agency, or other governing body shall be authorized to utilize the procedures of this chapter to provide for the planning, design, finance, construction, acquisition, leasing, operation, and maintenance of surface transportation projects. The provisions of this chapter shall be an alternative to such other methods to be exercised at the option of each sponsoring local government or public body;

(2) One or more public bodies may participate in the consideration and implementation of a surface transportation project at the discre-

tion of the sponsoring local government. Where more than one public body agrees to participate in the consideration or implementation of a surface transportation project, the participants may designate one or more representatives of each such participating public body, as agreed to by the sponsoring local government or the urban redevelopment agency;

(3)(A) An urban redevelopment agency designated by the sponsoring local government may evaluate a project to determine the appropriate or desirable levels of public and private participation in planning, designing, financing, constructing, operating, maintaining, or facilitating, or any combination thereof, for the execution of such project. Such urban redevelopment agency may designate a public nonprofit, private corporation, body, or entity to perform this function and to otherwise perform the activities contemplated in this Code section.

(B) A sponsoring local government or an urban redevelopment agency shall be authorized to issue, individually or in sequenced stages, written requests for expressions of interest, qualifications, or proposals, or any combination thereof, or other similar methods of procurement or solicitation. Such requests shall indicate the scope of the project, the proposed public and private financial participation in the project, including, but not limited to, the rights, responsibilities, obligations, revenue sharing features, any lease, license, availability or other payment rights, and any other allocations of interests and federal and state income tax benefits in respect of real and personal property relating to a project. Such requests shall include the factors to be used in evaluating responses, the relative importance of any applicable evaluation factors, and other contractual terms and conditions expected, including any unique capabilities or qualifications that will be required of respondents, as determined in the sole discretion of the designated representative of the sponsoring local government. Public notice of such requests shall be made at least 30 days prior to the date set for the release of said request by posting a legal notice on the websites and weekly in the legal organ of the sponsoring local government and the public body implementing the project, in substantially the same manner utilized by such public bodies in order to solicit requests for proposals, with a copy of such notice provided simultaneously to each affected public body.

(C)(i) The public body implementing the project and the sponsoring local government, with the participation of any designated representatives of other participating public bodies as determined by the sponsoring local government, may engage in individual discussions and interviews with each respondent

deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation as called for in such request. Repetitive interviews may be conducted. Any such interviews shall be deemed to be a part of the procurement process.

(ii)(I) At the conclusion of the final stage, on the basis of evaluation factors published in the request and all information developed in the selection process, the public body implementing the surface transportation project, in an open and public meeting subject to the provisions of Chapter 14 of Title 50, shall rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids.

(II) After ranking the proposals, the public body implementing the project shall begin negotiations with the first ranked private entity. If such public body and first ranked private entity do not reach a comprehensive agreement or interim agreement, such public body may conduct negotiations with the next ranked private entity. Such process shall continue until such public body either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity. Negotiations conducted with one or more selected respondent pursuant to this Code section shall continue to be deemed an active procurement until the execution of the final, definitive agreement with the selected respondent or respondents.

(iii) The public body implementing the project shall select for approval the respondent offering the most satisfactory and advantageous contract terms for the project based upon a thorough assessment of any one or more of the following: experience and reputation with similar projects; engineering and design quality; value; projected savings during, before, or after construction; and the ability of the final project's characteristics to meet the goals of the sponsoring local government, consistent with applicable plans and programs. The fair market value of any property included as a part of the procurement may be based on the consideration of the above factors, but it shall not be less than the initial cost to obtain the property. Before making such selection, the designated representative shall consult in an open and public meeting subject to the provisions of Chapter 14 of Title 50 with the representatives of any participating local governing authority, participating local authority, participating state agency, department, or authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions

for multiple awards are included in the request, the implementing public body may award contracts to more than one respondent. Should the implementing public body determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the other respondents under consideration, a contract may be negotiated and awarded to that respondent.

(iv) Upon approval of the selection by the implementing public body, a contract or contracts not exceeding 50 years in duration may be entered into by the urban redevelopment agency or any one or more of the participating public bodies and the selected respondent or respondents. The private financial data or financial plans which qualify as trade secrets pursuant to Code Section 10-1-761 and paragraph (34) of subsection (a) of Code Section 50-18-72 provided by the respondents shall remain exempt from Code Section 50-18-72 during and after the conclusion of the related selection process.

(D) A dispute over the award of a contract under this chapter shall be resolved by the filing of a petition in the superior court of the county in which the sponsoring local government is located within 30 days of the awarding of such contract and shall be determined through the use of a special master appointed by the judge of the superior court of the county in which the sponsoring local government is located. The special master shall not be authorized to enjoin or otherwise delay or suspend the execution of the contract and any work to be performed under such contract. The decision of the special master with regard to such dispute shall be appealable for a de novo review to the superior court of the county in which the sponsoring local government is located within 30 days following the decision of the special master.

(E) Nothing in this chapter shall require the designated representatives, the sponsoring local government, the implementing public body, or any participating public body to continue negotiations or discussions arising out of any request or any other procurement initiated under the provisions of this Code section.

(F) Every public body shall be authorized to promulgate reasonable rules and regulations to assist in its evaluation of responses and to implement the purposes of this chapter; provided, however, that unsolicited proposals shall not be permitted;

(4) No public officer, employee, or member of any participating public body, with respect to contracts of such public body, or the General Assembly shall serve as an agent, lobbyist, or board member for any private entity directly or indirectly under a contract or

negotiating a contract provided for by this chapter for one year after leaving his or her position as a public officer, employee, or member of the public body or the General Assembly; and

(5) Contracts entered into with a private enterprise in respect to the design, construction, operation, financing, or management of the public components of a surface transportation project shall not constitute the acquisition of property for a private use, nor shall such contracts be deemed a sale, lease, or other disposition of the related interests in property under any provisions of this chapter or other provision of applicable law, and such public components of a surface transportation project shall be deemed a public use for all purposes under applicable provisions of law, including, without limitation, Code Sections 36-61-9 and 36-61-10. (Ga. L. 1955, p. 354, § 3; Ga. L. 2015, p. 1329, § 3/SB 4.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions of this Code section as subsection (a); and added subsection (b).

36-61-5. Resolution of necessity prerequisite to exercise of powers.

No municipality or county shall exercise any of the powers conferred upon municipalities and counties by this chapter until after its local governing body has adopted a resolution finding that:

(1) One or more pockets of blight exist in such municipality or county; and

(2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality or county. (Ga. L. 1955, p. 354, § 5; Ga. L. 2015, p. 1318, § 3/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pockets of blight" for "slum areas" near the beginning of paragraph (1).

36-61-6. Formulation of workable program.

For the purposes of this chapter, a municipality or county may formulate a workable program for utilizing appropriate private and public resources, including those specified in Code Section 36-61-11, to eliminate and prevent the development or spread of pockets of blight, to encourage needed urban rehabilitation, to provide for the redevelopment of pockets of blight, or to undertake such of the aforesaid activities or such other feasible municipal or county activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for the

prevention of the spread of pockets of blight into areas of the municipality or county which are free from pockets of blight, through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of pockets of blight or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements, including without limitation surface transportation projects, encouraging voluntary rehabilitation, and compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of pockets of blight or portions thereof. (Ga. L. 1955, p. 354, § 4; Ga. L. 2015, p. 1318, § 4/HB 174; Ga. L. 2015, p. 1329, § 4/SB 4.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, throughout this Code section, substituted "pockets of blight" for "slums" and "slum areas", and, near the beginning of the first sentence, inserted a comma after "appropriate private and public resources". The second 2015 amendment, effective July 1, 2015, inserted ", including without limitation surface transportation projects" near the middle of the last sentence.

36-61-7. Preparation of redevelopment plan; approval; modification; effect of approval.

(a) A municipality or county shall not approve an urban redevelopment plan for an urban redevelopment area unless the governing body, by resolution, has determined such area to be a pocket of blight and designated such area as appropriate for an urban redevelopment project. Authority is vested in every municipality and county to prepare, to adopt, and to revise, from time to time, a general plan for the physical development of the municipality or county as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal and county planning activities, and to make available and to appropriate the necessary funds therefor. A municipality or county shall not acquire real property for an urban redevelopment project unless the local governing body has approved the urban redevelopment plan in accordance with subsection (d) of this Code section.

(b) The municipality or county may itself prepare or cause to be prepared an urban redevelopment plan; alternatively, any person or agency, public or private, may submit a plan to a municipality or county.

(c) The local governing body of the municipality or county shall hold or shall cause some agency of the municipality or county to hold a public hearing on an urban redevelopment plan or a substantial modification of an approved urban redevelopment plan, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality or county. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify

the urban redevelopment area covered by the plan, and shall outline the general scope of the urban redevelopment project under consideration.

(d) Following such hearing, the local governing body may approve an urban redevelopment plan if it finds that:

(1) A feasible method exists for the relocation of families who will be displaced from the urban redevelopment area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families;

(2) The urban redevelopment plan conforms to the general plan of the municipality or county as a whole; and

(3) The urban redevelopment plan will afford maximum opportunity, consistent with the sound needs of the municipality or county as a whole, for the rehabilitation or redevelopment of the urban redevelopment area by private enterprise.

(e) An urban redevelopment plan may be modified at any time, provided that, if modified after the lease or sale by the municipality or county of real property in the urban redevelopment project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his or her successor or successors in interest may be entitled to assert. Any proposed modification which will substantially change the urban redevelopment plan as previously approved by the local governing body shall be subject to the requirements of this Code section, including the requirement of a public hearing, before it may be approved.

(f) Upon the approval of an urban redevelopment plan by a municipality or county, the provisions of the plan with respect to the future use and building requirements applicable to the property covered by the plan shall be controlling with respect thereto. (Ga. L. 1955, p. 354, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 2015, p. 1318, § 5/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pocket of blight" for "slum area" near the middle of the first sentence of subsection (a); and inserted "or her" near the end of the first sentence of subsection (e).

36-61-8. Powers of municipalities and counties generally.

Every municipality and every county shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others granted in this chapter:

(1) To undertake and carry out urban redevelopment projects within its area of operation; to make and execute contracts and other

instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate pocket of blight clearance and urban redevelopment information;

(2) To provide, to arrange, or to contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with an urban redevelopment project and to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements, provided that neither the municipality or county itself nor an urban redevelopment agency or housing authority or downtown development authority acting pursuant to an election under Code Section 36-61-17 shall provide, install, or construct any public utility of the same kind or character as an existing utility operating in the municipality or county if such existing utility is providing reasonably adequate and proper service, as determined by the Public Service Commission; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or to compliance with labor standards in the undertaking or carrying out of an urban redevelopment project, and to include, in any contract let in connection with such a project, provisions to fulfill such conditions as it may deem reasonable and appropriate;

(3) Within its area of operation, to enter upon any building or property in any urban redevelopment area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality or county against any risks or hazards, and to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality or county or other public body exercising powers under this chapter in the exercise of such functions with respect to an urban redevelopment project, unless the General Assembly shall specifically so state;

(4) To invest any urban redevelopment project funds held in reserves or sinking funds or any such funds not required for imme-

diate disbursement in property or securities in which savings banks may legally invest funds subject to their control; and to redeem such bonds as have been issued pursuant to Code Section 36-61-12 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(5) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality or county may include in any contract for financial assistance with the federal government for an urban redevelopment project such conditions imposed pursuant to federal law as the municipality or county may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(6) Within their area of operation, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation:

(A) A general plan for the locality as a whole;

(B) Urban redevelopment plans;

(C) Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, to include but not to be limited to making loans and grants from funds received from the federal government, as well as from funds received from the repayment of such loans and interest thereon, to persons, public or private, owning private housing for the purpose of financing the rehabilitation of such housing;

(D) Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(E) Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban redevelopment projects.

The municipality or county is authorized to develop, test, and report methods and techniques and to carry out demonstrations and other activities for the prevention and elimination of pockets of blight and

to apply for, accept, and utilize grants of funds from the federal government for such purposes;

(7) To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban redevelopment area, to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban redevelopment project;

(8) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter and to levy taxes and assessments for such purposes; to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; to plan or replan, zone, or rezone any part of the municipality or county or make exceptions from building regulations; and to enter into agreements, under Code Section 36-61-17, with a housing authority, a downtown development authority, or an urban redevelopment agency vested with urban redevelopment project powers, which agreements may extend for up to 50 years respecting action to be taken by such municipality or county pursuant to any of the powers granted by this chapter. The reasonable costs of removing, relocating, and rearranging public utility facilities within urban renewal areas may constitute a cost of carrying out the purposes of this chapter, and every municipality and county may, in their discretion, pay such reasonable costs or any portion thereof;

(9) Within their areas of operation, to organize, coordinate, and direct the administration of the provisions of this chapter as they apply to such municipality or county, in order that the objective of remedying pockets of blight and preventing the causes thereof within the municipality or county may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or county or to reorganize existing offices in order to carry out such purpose most effectively; and

(10) To exercise all or any part or combination of powers granted in this Code section. (Ga. L. 1955, p. 354, § 7; Ga. L. 1963, p. 644, § 2; Ga. L. 1976, p. 946, § 1; Ga. L. 1992, p. 2533, § 13; Ga. L. 2015, p. 1318, § 6/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pocket of blight" for "slum" near the end of paragraph (1); substituted "pockets of blight" for "slums" near the end of the ending undesignated paragraph in paragraph (6); and, in paragraph (9), substituted "pockets of blight" for "slums" near the middle and substituted "; and" for a period at the end.

36-61-9. Power of eminent domain; conditions; title acquired.

JUDICIAL DECISIONS

Not applicable to conveyance of previously condemned property. — Even assuming the original condemnation proceeding was conducted pursuant to the Urban Redevelopment Law and that O.C.G.A. § 36-61-9 was applicable to it, the 2003 conveyance was not a re-taking by a municipality or county and thus the transaction was not governed by the requirements of § 36-61-9. By its terms, the statute applies to the original taking of property by eminent domain. The 2003 conveyance was, instead, a re-purposing of the property from that involved in the original taking. Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

36-61-10. Disposal of property in redevelopment area generally; notice and bidding procedures; exchange with veterans' organization; temporary operation of property.

(a) A municipality or county may sell, lease, or otherwise transfer real property in an urban redevelopment area or any interest therein acquired by it and may enter into contracts with respect thereto, for residential, recreational, commercial, industrial, or other uses or for public use; or the municipality or county may retain such property or interest for public use, in accordance with the urban redevelopment plan, subject to such covenants, conditions, and restrictions, including covenants running with the land and including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, as it may deem to be in the public interest or necessary or desirable to assist in preventing the development or spread of future pockets of blight or to otherwise carry out the purposes of this chapter. Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban redevelopment plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban redevelopment plan and may be obligated to comply with such other requirements as the municipality or county may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on the real property required by the urban redevelopment plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban redevelopment plan. In determining the fair value of real property for uses in accordance with the urban redevelopment plan, a municipality or county shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality or county retaining the property; and the objectives of such plan for the prevention of the recurrence of

pockets of blight. The municipality or county in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality or county until he or she has completed the construction of any and all improvements which he or she has obligated himself or herself to construct thereon. Real property acquired by a municipality or county which, in accordance with the provisions of the urban redevelopment plan, is to be transferred shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban redevelopment plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions, including the incorporation by reference therein of the provisions of an urban redevelopment plan or any part thereof, shall not prevent the filing of the contract or conveyance in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b)(1) A municipality or county may dispose of real property in an urban redevelopment area to private persons only under such reasonable competitive bidding procedures as it shall prescribe, as are provided in this subsection or, solely with respect to and for the benefit of advancing surface transportation projects, as provided in Code Section 36-61-4. A municipality or county, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under this Code section, may invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban redevelopment area or any part thereof. The notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in the notice. The municipality or county shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the municipality or county in the urban redevelopment area. The municipality or county may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter. The municipality or county may execute contracts in accordance with subsection (a) of this Code section and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contracts.

(2) Notwithstanding the provisions or requirements of this Code section, any municipality or county may exchange real property or

land, whether vacant or improved, in any urban redevelopment area for real property or land, whether vacant or improved, owned by any post, barracks, encampment, chapter, subsidiary, or any other division or unit of any veterans' organization chartered by the United States Congress, provided such real property or land was owned by the veterans' organization on March 6, 1962, and, provided, further, that the municipality or county owning such urban redevelopment area desires to obtain the real property or land owned by the veterans' organization for civic improvements, including, but not limited to, the building of art theaters, stadiums, parks, playgrounds, auditoriums, civic theaters, and performing arts theaters.

(c) A municipality or county may temporarily operate and maintain real property acquired in an urban redevelopment area, pending the disposition of the property for redevelopment, without regard to subsection (a) of this Code section, for such uses and purposes as may be deemed desirable, even if such uses and purposes are not in conformity with the urban redevelopment plan. (Ga. L. 1955, p. 354, § 9; Ga. L. 1962, p. 702, § 1; Ga. L. 2015, p. 1318, § 7/HB 174; Ga. L. 2015, p. 1329, § 5/SB 4.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in subsection (a), substituted "pockets of blight" for "slums" near the end of the first sentence, substituted "pockets of blight" for "slum areas" in the fifth sentence, and, in the sixth sentence, inserted "or she" twice and inserted "or herself". The second 2015 amendment, effective July 1, 2015, in paragraph (b)(1), in the first sentence, substituted "prescribe, as" for "prescribe or" near the middle, and added "or, solely with respect to and for the benefit of advancing surface transportation projects, as provided in Code Section 36-61-4" at the end.

36-61-12. Issuance of bonds; payment; tax exemption; form; terms; signatures; negotiability; effect of recitation on bonds.

(a) A municipality or county shall have power to issue bonds, in its discretion, from time to time, to finance the undertaking of any urban redevelopment project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban redevelopment projects and shall also have power to issue refunding bonds for the payment of retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality or county derived from or held in connection with its undertaking and carrying out of urban redevelopment projects under this chapter; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban redevelopment

projects of the municipality or county under this chapter, and by a mortgage of any such urban redevelopment projects or any part thereof, title to which is in the municipality, county, or redevelopment agency.

(b) Bonds issued under this Code section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this Code section shall be authorized by resolution or ordinance of the local governing body. They may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution of the local governing body or by the trust indenture or mortgage issued pursuant thereto.

(d) All revenue bonds, but not notes or other obligations, issued under this Code section shall be issued and validated under and in accordance with the procedure set forth in Article 3 of Chapter 82 of this title. The provisions of any resolution or ordinance authorizing the issuance of bonds under this Code section shall be a contract with every holder of such bonds and enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(e) If any of the public officials of the municipality or county whose signatures appear on any bonds or coupons issued under this chapter cease to be such officials before the delivery of the bonds, such signatures, nevertheless, shall be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality or county in connection with an urban redevelopment project, as defined in paragraph (25) of Code Section 36-61-2, shall be conclusively deemed to have been issued for such purpose and such

project shall be conclusively deemed to have been planned, located, and carried out in accordance with this chapter.

(g) Any urban redevelopment agency or housing authority which a municipality or county has elected to exercise powers under Code Section 36-61-17 may also issue bonds, as provided in this Code section, in the same manner as a municipality or county, except that such bonds shall be authorized and the terms and conditions thereof shall be prescribed by the commissioners of such urban redevelopment agency or housing authority in lieu of the local governing body. (Ga. L. 1955, p. 354, § 10; Ga. L. 1970, p. 115, § 1; Ga. L. 1980, p. 1352, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 1329, § 6/SB 4.)

The 2015 amendment, effective July 1, 2015, substituted "municipality, county, or redevelopment agency" for "municipality or county" at the end of the last sentence of subsection (a); substituted the present provisions of subsection (d) for the former provisions, which read: "Such bonds may be sold at not less than par at public sales held after notice published prior to such sales in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality or county may determine or may be exchanged for other bonds on the basis of par. Such bonds may be sold to the federal government or to an institution insured by an agency of the federal government at private sale at not less than par and, in the event that less than all of the authorized principal amount of such bonds is sold to the federal government or to an institution insured by an agency of the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality or county, such cost not to exceed the interest cost to the municipality or county of the portion of the bonds sold to the federal government or to an institution insured by an agency of the federal government."; and substituted "paragraph (24)" for "paragraph (22)" in the middle of subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "paragraph (25)" was substituted for "paragraph (24)" in the middle of subsection (f).

36-61-14. Exemption of property from execution, levy, and sale; tax exemption.

(a) All property of a municipality or county, including funds owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall judgment against a municipality or county be a charge or lien upon such property; provided, however, that this Code section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality or county on its rents, fees, grants, or revenues from urban redevelopment projects.

(b) The property of a municipality, county, or any other public body, acquired or held for the purpose of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county,

the state, or any political subdivision thereof. Such tax exemption shall terminate when the municipality or county sells, leases, or otherwise disposes of property in an urban redevelopment area to a purchaser or lessee who or which is not a public body. (Ga. L. 1955, p. 354, § 12; Ga. L. 2015, p. 1329, § 7/SB 4.)

The 2015 amendment, effective July 1, 2015, substituted "municipality, county, or any other public body," for "municipality or county," near the beginning of the first sentence of subsection (b).

36-61-16. Assistance by public bodies generally; powers of public bodies; powers of municipalities and counties.

(a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project located within the area in which it is authorized to act, any public body, upon such terms, with or without consideration, as it may determine, may:

(1) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality or county;

(2) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this Code section;

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban redevelopment plan;

(4) Lend, grant, or contribute funds to a municipality or county;

(5) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or county or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban redevelopment project and other provisions allocating legal responsibility for matters arising under or in connection with transactions entered into pursuant to Code Section 36-61-4; and

(6) Cause public buildings and public facilities, including parks, trails, greenspace, playgrounds, recreational, community, education, transit, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan, replan, zone, or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality or county.

If at any time title to or possession of any urban redevelopment project is held by any public body or governmental agency, other than the municipality or county, which is authorized by law to engage in the undertaking, carrying out, or administration of urban redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of the agreements referred to in this subsection shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the terms "municipality" and "county" shall also include an urban redevelopment agency or a housing authority vested with all of the urban redevelopment project powers pursuant to Code Section 36-61-17.

(b) Any sale, conveyance, lease, or agreement provided for in this Code section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

(c) For the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of an urban redevelopment agency or a housing authority under this chapter, a municipality or county may, in addition to their other powers and upon such terms, with or without consideration, as they may determine, do and perform any or all of the actions or things which, by subsection (a) of this Code section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(d) For the purposes of this Code section or for the purpose of aiding in the planning, undertaking, or carrying out of an urban redevelopment project of a municipality or county, such municipality or county may, in addition to any authority to issue bonds pursuant to Code Section 36-61-12, issue and sell its general obligation bonds. Any bonds issued by a municipality or county pursuant to this Code section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality and county for public purposes generally. (Ga. L. 1955, p. 354, § 13; Ga. L. 1982, p. 3, § 36; Ga. L. 2015, p. 1329, § 8/SB 4.)

The 2015 amendment, effective July 1, 2015, inserted "and other provisions allocating legal responsibility for matters arising under or in connection with transactions entered into pursuant to Code Section 36-61-4" near the end of paragraph (a)(5); and, in paragraph (a)(6), inserted "trails, greenspace," and "transit," near the beginning.

36-61-17. Exercise of redevelopment powers by municipalities and counties; delegation to redevelopment agency or housing authority.

(a) A municipality or county may itself exercise its "urban redevelopment project powers," as defined in subsection (b) of this Code section, or may, if the local governing body by resolution determines such action

to be in the public interest, elect to have such powers exercised by the urban redevelopment agency created by Code Section 36-61-18 or by a housing authority, if one exists or is subsequently established in the community, or by an existing or subsequently established downtown development authority. In the event that the local governing body makes such determination, the urban redevelopment agency or the housing authority or downtown development authority, as the case may be, shall be vested with all of the "urban redevelopment project powers" of the municipality or county conferred in this chapter, in the same manner as though all such powers were conferred on the agency or authority instead of the municipality or county; and any public body may cooperate with the urban redevelopment agency or housing authority or the downtown development authority to the same extent that it could cooperate with the municipality or county itself if the municipality or county were exercising its urban redevelopment project powers. If the local governing body does not elect to make such determination, the municipality or county in its discretion may exercise its urban redevelopment project powers through a board or commissioner or through such officers of the municipality or county as the local governing body may by resolution determine.

(b) As used in this Code section, the term "urban redevelopment project powers" shall include all of the rights, powers, functions, duties, privileges, immunities, and exemptions granted to a municipality or county under this chapter, except the following:

(1) The power to determine an area to be a pocket of blight and to designate such area as appropriate for an urban redevelopment project;

(2) The power to approve and amend urban redevelopment plans;

(3) The power to establish a general plan for the locality as a whole;

(4) The power to formulate a workable program under Code Section 36-61-6;

(5) The powers, duties, and functions referred to in Code Section 36-61-11;

(6) The power to make the determinations and findings provided for in Code Section 36-61-4, Code Section 36-61-5, and subsection (d) of Code Section 36-61-7;

(7) The power to issue general obligation bonds; and

(8) The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in paragraph (8) of Code Section 36-61-8. (Ga. L. 1955, p. 354, § 16; Ga. L. 1982, p. 3, § 36; Ga.

L. 1987, p. 3, § 36; Ga. L. 1992, p. 2533, § 15; Ga. L. 2015, p. 1318, § 8/HB 174.)

The 2015 amendment, effective July 1, 2015, substituted "pocket of blight" for "slum area" in the middle of paragraph (b)(1).

CHAPTER 62

DEVELOPMENT AUTHORITIES

36-62-1. Short title.

JUDICIAL DECISIONS

Cited in Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-62-2. Definitions.

JUDICIAL DECISIONS

Failure to meet characteristics of office building or hotel facility. — In a taxpayers' suit against a county and officials, the court upheld the grant of summary judgment to the county because the testimony of counsel for the taxpayers was insufficient to create an issue of material fact on the taxpayer's claims in regard to the tax-exempt status of the county development authority-owned properties as there was no evidence that any of the properties actually possessed the characteristics of an office building or hotel facility as defined in O.C.G.A. § 36-62-2. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832 (2015).

36-62-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

JUDICIAL DECISIONS

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Tax exempt status not shown. — In a taxpayer's suit against a county and officials, the court upheld the grant of summary judgment to the county because the testimony of the counsel for the taxpayers was insufficient to create an issue of material fact on the taxpayer's claims in regard to the tax-exempt status of the county development authority-owned properties as there was no evidence that any of the properties actually possessed the characteristics of an office building or hotel facility as defined in O.C.G.A. § 36-62-2. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832 (2015).

36-62-6. Powers of authority generally.

JUDICIAL DECISIONS

Development authority not required to own or operate project to issue bonds. — Proposed bond transaction did not violate Ga. Const. 1983 Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

36-62-8. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

JUDICIAL DECISIONS

Validation order insufficient. — Because a revenue bond validation order contained merely a dry recitation that certain legal requirements had been met, adequate appellate review of the trial court's decision making process was effectively prevented; the validation order did not specifically address a resident's objection that the transaction did not comply with the Development Authorities Law, O.C.G.A. § 36-62-8(b), or the process by which the court came to the court's conclusion that the proposed transaction followed all proper and necessary steps. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-62-9. Purposes of chapter; issuance of bonds or bond anticipation notes; exceptions.

JUDICIAL DECISIONS

Development authority not required to own or operate project to issue bonds. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

CHAPTER 66

ZONING PROCEDURES

36-66-1. Short title.

JUDICIAL DECISIONS

Failure to address constitutional issue on part of trial court. — Trial court erred by failing to address whether a 1993 county zoning ordinance was constitutional because the record established that the landfill permit applicant raised a constitutional challenge to the zoning ordinance before the trial court in its response to the challengers' motion for partial summary judgment and, in fact, in its transfer order to the appellate court, the trial court specifically stated that the court did not rule on the applicant's constitutional argument. Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Owners Ass'n, Inc., 769 S.E.2d 823, No. A14A1562, 2015 Ga. App. LEXIS 190 (2015).

36-66-3. Definitions.

JUDICIAL DECISIONS

"Zoning decision" construed.

Letter from a county to a developer advising that proposals would be considered under an amended ordinance limiting the development of private sewer systems was not a "decision" of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20; therefore, the developer's claim of inverse condemnation never ripened. Mortgage Alliance Corp. v. Pickens County, 294 Ga. 212, 751 S.E.2d 51 (2013).

CHAPTER 66B

MOBILE BROADBAND INFRASTRUCTURE LEADS TO DEVELOPMENT

36-66B-1. Short title.

This chapter shall be known and may be cited as the "Mobile Broadband Infrastructure Leads to Development (BILD) Act." (Code 1981, § 36-66B-1, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, substituted "'Mobile Broadband Infrastructure Leads to Development (BILD) Act'" for "'Advanced Broadband Collocation Act'".

Law reviews. — For article on the 2014 amendment of this chapter, see 31 Ga. St. U.L. Rev. 149 (2014).

36-66B-2. Legislative findings and intent.

(a) The General Assembly finds that the enactment of this chapter is necessary to:

(1) Ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout this state;

(2) Ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development, and the general welfare;

(3) Encourage where feasible the modification or collocation of wireless facilities on existing wireless support structures over the construction of new wireless support structures in the deployment or expansion of commercial wireless networks; and

(4) Allow the deployment of critical wireless infrastructure to ensure that first responders can provide for the health and safety of all residents of Georgia.

(b) While recognizing and confirming the purview of local governments to exercise zoning, land use, and permitting authority within

their territorial boundaries with regard to the location, construction, and modification of wireless communication facilities, it is the intent of this chapter to establish procedural standards for the exercise of such authority so as to streamline and facilitate the construction, collocation, or modification of such facilities, including the placement of new or additional wireless facilities on existing wireless support structures. It is not the intent of this chapter to limit or preempt the scope of a local government's review of zoning, land use, or permitting applications for the siting of wireless facilities or wireless support structures or to require a local government to exercise its zoning power. (Code 1981, § 36-66B-2, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, in subsection (a), deleted "and" from the end of paragraph (a)(2), substituted "; and" for a period at the end of paragraph (a)(3), and added paragraph (a)(4); and inserted "construction, collocation, or" near the middle of the first sentence of subsection (b).

36-66B-3. Definitions.

As used in this chapter, the term:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

(2) "Antenna" means communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.

(3) "Application" means a formal request submitted to the local governing authority to construct, collocate, or modify a wireless support structure or a wireless facility.

(4) "Collocate" or "collocation" means the placement or installation of new wireless facilities on previously approved and constructed wireless support structures, including monopoles and towers, both self-supporting and guyed, in a manner that negates the need to construct a new freestanding wireless support structure. Such term includes the placement of accessory equipment within an existing equipment compound.

(5) "Complete application" means an application containing all documents, information, and fees specifically enumerated in or required by the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(6) "Equipment compound" means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

(7) "Local governing authority" means a municipality or county that has adopted land use or zoning regulations for all or the majority of land uses within its jurisdiction or has adopted separate regulations pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(8) "Modification" or "modify" means the improvement, upgrade, expansion, or replacement of existing wireless facilities on an existing wireless support structure or within an existing equipment compound, provided such improvement, upgrade, expansion, or replacement does not increase the height of the wireless support structure or increase the dimensions of the equipment compound.

(9) "Registry" means any official list, record, or register maintained by a local governing authority of wireless facilities, equipment compounds, or wireless support structures.

(10) "Utility" means any person, corporation, municipality, county, or other entity, or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or telecommunications services.

(11) "Wireless facility" means the set of equipment and network components, exclusive of the underlying wireless support structure, including antennas, transmitters, receivers, base stations, power supplies, cabling, and accessory equipment, used to provide wireless data and wireless telecommunication services.

(12) "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service. (Code 1981, § 36-66B-3, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, inserted "transmits, receives, or" near the beginning of paragraph (2); in paragraph (3), substituted "collocate" for "collate" in the first sentence and deleted the former second sentence, which read: "An application shall be deemed complete when all documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, modification, or operation of wireless facilities are submitted by the applicant to the authority."; substituted "'Collocate' or 'collocation'" for "'Collocation'" at the beginning of paragraph (4); added paragraph (5); redesignated former paragraphs (5) through (7) as present paragraphs (6) through (8), respectively; inserted "collocation," in paragraph (7); added paragraphs (9) and (10); redesignated former paragraphs (8)

and (9) as present paragraphs (11) and (12), respectively; inserted "wireless" preceding "telecommunication" near the end of paragraph (11); and, in paragraph (12), substituted "any telephone or electrical utility pole or any tower" for "any electrical utility pole or tower" in the second sentence.

36-66B-4. Streamlined processing.

(a) Applications for collocation or modification of a wireless facility entitled to streamlined processing under this Code section shall be reviewed for conformance with applicable site plan and building permit requirements, including zoning and land use conformity, but shall not otherwise be subject to the issuance of additional zoning, land use, or special use permit approvals beyond the initial zoning, land use, or special permit approvals issued for such wireless support structure or wireless facility. The intent of this Code section is to allow previously approved wireless support structures and wireless facilities to be modified or collocations thereto to be accepted without additional zoning or land use review beyond that which is typically required by the local governing authority for the issuance of building or electrical permits.

(b) The streamlined process set forth in subsection (a) of this Code section shall apply to applications for proposed modifications and to applications for proposed collocations that meet the following requirements:

(1) The proposed modification or collocation shall not increase the overall height or width of the wireless support structure to which the wireless facilities are to be attached;

(2) The proposed modification or collocation shall not increase the dimensions of the equipment compound initially approved by the local governing authority;

(3) The proposed modification or collocation shall comply with applicable conditions of approval, if any, applied to the initial wireless facilities and wireless support structure, as well as any subsequently adopted amendments to such conditions of approval; and

(4) The proposed modification or collocation shall not exceed the applicable weight limits for the wireless support structure, as demonstrated by a letter from a structural engineer licensed to practice in this state.

(c) A local governing authority's review of an application to modify or collocate wireless facilities on an existing wireless support structure shall not include an evaluation of the technical, business, or service characteristics of such proposed wireless facilities. A local governing authority shall not require an applicant to submit radio frequency analyses or any other documentation intended to demonstrate the

proposed service characteristics of the proposed wireless facilities, to illustrate the need for such wireless facilities, or to justify the business decision to collocate such wireless facilities; provided, however, that the local governing authority may require the applicant to provide a letter from a radio frequency engineer certifying the applicant's proposed wireless facilities will not interfere with public safety emergency communications.

(d) Within 90 calendar days of the date an application for modification or collocation of wireless facilities is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(e) Within 30 calendar days of the date an application for modification or collocation is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the 90 calendar day review period set forth in subsection (d) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities. (Code 1981, § 36-66B-4, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, substituted "modified or collocations thereto to be accepted" for "modified or accept collocations" in the second sentence of subsection (a); substituted "proposed modifications and to applications for proposed" for "all modifications and to applications for all proposed" in the introductory paragraph of subsection (b); inserted "modification or" throughout paragraphs (b)(1) through (b)(4); inserted "initially" in paragraph (b)(2); inserted "public safety" near the end of the last sentence of subsection (c); and, in subsection (e), in the first sentence, inserted "determine if it is a complete application and, if it determines the application is not a complete application", substituted "such application" for "the application" near the end, and added the last sentence.

36-66B-5. Time limitations for review of application for new wireless facilities or support structure.

(a) Within 150 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(b) Within 30 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the calendar day review period set forth in subsection (a) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's existing regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities. (Code 1981, § 36-66B-5, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

36-66B-6. Limitations on local regulations.

In the regulation of the placement or construction of any new wireless facility or wireless support structure, a local governing authority shall not:

(1) Condition the approval of any application for a new wireless support structure on a requirement that a modification or collocation to such structure be subject to a review that is inconsistent with the requirements of Code Section 36-66B-4;

(2) Require the removal of existing wireless support structures or wireless facilities as a condition to approval of an application for a new wireless facility or wireless support structure unless such existing wireless support structure or wireless facility is abandoned and owned by the applicant; or

(3) Require the applicant to place an antenna or other wireless communications equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant. (Code 1981, § 36-66B-6, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

36-66B-7. Limitations on local fees charged.

A local governing authority shall not:

(1) Charge an applicant a zoning, permitting, or other fee for review or inspection of a new or existing wireless facility or wireless support structure in an amount greater than the amount authorized by subsection (a) of Code Section 48-13-9;

(2) Charge an applicant a zoning, permitting, or other fee for review or inspection of a collocation or modification in excess of $500.00;

(3) Seek reimbursement from the applicant for any application fees, consultation fees, registry fees, or audit fees with respect to a wireless facility or wireless support structure that are based on a contingency fee arrangement; or

(4) Charge a wireless service provider or wireless infrastructure provider any rental, license, or other fees in excess of the fair market value for rental or use of similarly situated property to renew or extend the term of a lease or other agreement for a wireless facility or wireless support structure on such local governing authority's property. (Code 1981, § 36-66B-7, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

CHAPTER 67A

CONFLICT OF INTEREST IN ZONING ACTIONS

36-67A-2. Disclosure of financial interests.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered,

the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822 (2013).

36-67A-4. Penalties.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822 (2013).

CHAPTER 70

COORDINATED AND COMPREHENSIVE PLANNING AND SERVICE DELIVERY BY COUNTIES AND MUNICIPALITIES

ARTICLE 2

SERVICE DELIVERY

36-70-20. Legislative intent.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-23. Required components.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the

"in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-25.1. Dispute resolution procedures.

JUDICIAL DECISIONS

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-26. Required filing; verification of components.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-27. Limitation of funding for projects inconsistent with strategy.

JUDICIAL DECISIONS

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-28. "Affected municipality" defined; review and revision of strategy.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

CHAPTER 71

DEVELOPMENT IMPACT FEES

36-71-1. Short title; legislative findings and intent.

JUDICIAL DECISIONS

Cited in Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600 (2014).

36-71-4. Calculation of fees.

JUDICIAL DECISIONS

Agreement requiring prepayment of impact fees.

Trial court did not err by denying a county's motion for summary judgment and concluding that the county's obligation to provide water and sewer lines under a 2006 agreement was not affected by the Georgia Court of Appeal's decision in another case invalidating the prepayment of development impact fees under a similar agreement because the invalid portion of the contract regarding the impact fees was severable under the agreement, which included an explicit severability clause. Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600 (2014).

CHAPTER 76

EXPEDITED FRANCHISING OF CABLE AND VIDEO SERVICES

Sec.
36-76-7. Customer service requirements.

36-76-6. Franchise fees.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

36-76-7. Customer service requirements.

(a) The holder of a state franchise shall comply with the customer service standards as set forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the holder of a state franchise to comply with any customer service standards other than those set forth in this Code section.

(b) Except as provided in paragraph (2) of subsection (c) of this Code section, each affected local governing authority shall receive and handle complaints from subscribers of the holder of a state franchise that reside in the affected local governing authority's jurisdiction.

(c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall establish a uniform set of rules, which may include fines and penalties, pursuant to which an affected local governing authority shall resolve subscriber complaints. Said rules shall include a requirement that the cable service provider or video service provider participate in mandatory nonbinding mediation with the affected local governing authority and the subscriber if the issue cannot be resolved between the cable service provider or video service provider and the subscriber. Said rules shall apply only until 50 percent of the potential subscribers within an affected local governing authority are offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise.

(2) After such time as 50 percent of the potential subscribers within an affected local governing authority are being offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise, an affected local governing authority may, in its discretion, by the adoption of a resolution or ordinance, discontinue receiving and handling all subscriber inquiries, billing issues, and other complaints for state franchise holders. Notwithstanding any other provision of law, where an affected local governing authority discontinues receiving and handling subscriber inquiries, billing issues, and other complaints relating to state franchise holders by adoption of a resolution or ordinance pursuant to this paragraph, bills to subscribers by cable service providers or video service providers holding a state franchise shall not include the contact information of such affected local governing authority for the purpose of directing or initiating complaints or making other such subscriber inquiries.

(d) Rules, orders, actions, and regulations previously adopted pursuant to this Code section shall remain of full force and effect as rules, orders, actions, and regulations of the Attorney General until amended, repealed, or superseded by rules or regulations adopted by the Attorney General. (Code 1981, § 36-76-7, enacted by Ga. L. 2007, p. 719, § 1/HB 227; Ga. L. 2008, p. 324, § 36/SB 455; Ga. L. 2015, p. 1088, § 26/SB 148.)

The 2015 amendment, effective July 1, 2015, added subsection (d).

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

CHAPTER 80

GENERAL PROVISIONS

36-80-5. Relief from or composition of debts under federal statute prohibited.

JUDICIAL DECISIONS

Bankruptcy. — Debtor, a Georgia county hospital authority, was ineligible for Chapter 9 relief because the State of Georgia, pursuant to O.C.G.A. § 36-80-5(a), had not specifically authorized the authority to file for relief under Chapter 9. United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

36-80-17. Authorization to contract for utility services; conditions and limitations.

JUDICIAL DECISIONS

Cited in City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

36-80-21. Definitions; electronic transmission of budgets.

(a) As used in this Code section, the term:

(1) "Audit" means an annual report of the financial affairs and transactions of a county, municipality, or consolidated government as required by Code Section 36-81-7 and an annual report of a school district as required by rule and regulation of the State Board of Education.

(2) "Budget" means:

(A) A plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing such expenditures for a county, municipality, or consolidated government as required by Article 1 of Chapter 81 of this title and such plans of financial operation for the general fund, each special revenue fund, each debt service fund, each internal service fund, each enterprise fund, and each fiduciary fund in use by such unit of local government as such funds are defined in Code Section 36-81-2; and

(B) A plan of financial operation of a school district as required by rule and regulation of the State Board of Education and Code Section 20-2-67.

(3) "Local government" means any local school board or a governing authority of a county or municipality having an annual budget in excess of $1 million.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia.

(5) "Website" means a website which shall be developed, operated, and maintained by the Vinson Institute that shall allow the public to review and analyze the information identified in subsections (c) and (d) of this Code section at no cost to the public or the local governments that post to the website.

(b) Each local government shall post the information required by this Code section to the website for each fiscal year beginning on and after January 1, 2011.

(c) As soon as a local government has adopted, by ordinance or resolution, a final budget for an upcoming fiscal year, a copy of the budget shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. In no event shall the PDF copy of the budget be transmitted to the Vinson Institute more than 30 calendar days following the adoption of the budget ordinance or resolution.

(d) After the close of a fiscal year, a copy of the audit of each local government shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. The PDF copy of the audit of a county, municipality, or consolidated government shall be transmitted to the Vinson Institute concurrent with submission of the audit to the state auditor as required by subsection (d) of Code Section 36-81-7. The audit of a school district shall be transmitted to the Vinson Institute concurrent with submission of the audit to the State Board of

Education as required by rule and regulation of the State Board of Education.

(e) Concurrent with the submission of the annual report by local law enforcement agencies required by subsection (g) of Code Section 9-16-19, a copy of such report shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable.

(f) The Vinson Institute shall, subject to appropriation by the General Assembly, develop the website for use by local governments under this Code section and provide all necessary training for local government officials in its operation in order to allow local governments to upload the information required by this Code section on a timely basis at no cost to such local governments. (Code 1981, § 36-80-21, enacted by Ga. L. 2010, p. 519, § 1/HB 122; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2014, p. 866, § 36/SB 340; Ga. L. 2015, p. 693, § 3-23/HB 233.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Code Section 20-2-67" for "paragraph (3) of subsection (a) of Code Section 20-2-167" in subparagraph (a)(2)(B).

The 2015 amendment, effective July 1, 2015, substituted "subsection (g) of Code Section 9-16-19" for "division (u)(4)(D)(iii) of Code Section 16-13-49" in the middle of subsection (e). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance.

(a) As used in this Code section, the term:

(1) "Federal officials or law enforcement officers" means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.

(2) "Immigration status" means the legality or illegality of an individual's presence in the United States as determined by federal law.

(3) "Immigration status information" means any information, not including any information required by law to be kept confidential but otherwise including but not limited to any statement, document,

computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.

(4) "Local governing body" means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, or political subdivision.

(5) "Local official or employee" means any elected or appointed official, supervisor or managerial employee, contractor, agent, or certified peace officer acting on behalf of or in conjunction with a local governing body.

(6) "Sanctuary policy" means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.

(b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.

(c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds to provide services specified in subsection (d) of Code Section 50-36-1.

(d) The Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies may require certification of compliance with this Code section as a condition of funding. (Code 1981, § 36-80-23, enacted by Ga. L. 2009, p. 734, § 1/SB 20; Ga. L. 2013, p. 111, § 5/SB 160.)

The 2013 amendment, effective July 1, 2013, substituted "subsection (d) of Code Section 50-36-1" for "subsection (c) of Code Section 50-36-1" at the end of subsection (c).

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

36-80-24. Limitation on elected official's use of government issued purchasing or credit cards; policy development.

(a) An elected official of a county, municipal corporation, local school system, or consolidated government shall be prohibited from the use of a government purchasing card or a government credit card unless:

(1) Such purchases are solely for items or services that directly relate to such official's public duties; and

(2) Such purchases are in accordance with guidelines adopted by the county, municipal corporation, local school system, or consolidated government.

(b) Documents related to such purchases incurred by such elected officials shall be available for public inspection.

(c) No such county, municipal corporation, local school system, or consolidated government shall issue government purchasing cards or government credit cards to elected officials on or after January 1, 2016, until the governing authority of such county, municipal corporation, local school system, or consolidated government, by public vote, has authorized such issuance and has promulgated specific policies regarding the use of such government purchasing cards or government credit cards for elected officials of such county, municipal corporation, local school system, or consolidated government. Such policies shall include the following:

(1) Designation of officials who shall be authorized to be issued such government purchasing cards or government credit cards;

(2) A requirement that, before being issued a government purchasing card or government credit card, authorized users shall sign and accept an agreement with the county, municipal corporation, local school system, or consolidated government issuing the government purchasing card or government credit card that such users will use such cards only in accordance with the policies of the issuing governmental entity;

(3) Transaction limits for the use of such cards;

(4) A description of purchases that shall be authorized for use of such cards;

(5) A description of purchases that shall not be authorized for use of such cards;

(6) Designation of a government purchasing card or government credit card administrator;

(7) A process for auditing and reviewing purchases made with such cards; and

(8) Procedures for addressing a violation of such purchasing card or credit card policies and imposing penalties for violations including, but not limited to, revocation of purchasing card or credit card privileges. Nothing in such procedures or any administrative action taken pursuant thereto shall preclude any other civil or criminal remedy under any other provision of law. (Code 1981, § 36-80-24, enacted by Ga. L. 2015, p. 266, § 5/HB 192.)

Effective date. — This Code section became effective July 1, 2015.

Cross references. — Misuse of government issued credit cards, § 16-9-37.

36-80-25. Financing of public projects by local entities.

(a) As used in this Code section, the term "project" means and includes hospitals, health care facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers, extended care facilities, and other health related facilities, whether public or private.

(b) To the extent that the Constitution of Georgia permits the General Assembly by law to further define the powers and duties of any local government authority, as defined in Code Section 36-80-16, whose purpose includes the public purpose of developing or promoting trade, commerce, or industry, and to enlarge or restrict the same, each such local government authority is authorized and shall have the power to finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds of such a local government authority or any other funds of such local government authority, or from any contributions or loans by persons, corporations, limited or general partnerships, or other entities, all of which such a local government authority is authorized to receive, accept, and use. To the extent that any project serves a governmental function, the General Assembly finds and determines that such a project by its nature comprises both public and private components that are integrated so as to produce the desired public purpose and that therefore carrying out such a project is proper and authorized for such a local government authority under the Constitution of Georgia. (Code 1981, § 36-80-25, enacted by Ga. L. 2015, p. 266, § 6/HB 192.)

Effective date. — This Code section became effective July 1, 2015.

Cross references. — State debt, Ga. Const. 1983, Art. 7, Sec. IV.

CHAPTER 81

BUDGETS AND AUDITS

Article 1

Local Government Budgets and Audits

ARTICLE 1

LOCAL GOVERNMENT BUDGETS AND AUDITS

36-81-8. Annual local government finances reports and local independent authority indebtedness reports; assistance by Department of Community Affairs; community indicators report.

(a) As used in this Code section, the term "local independent authority" means each local public body corporate and politic created in and for a county, municipality, consolidated government, or combination thereof, which is authorized to issue bonds under the Constitution and laws of this state.

(b)(1)(A) Each unit of local government shall submit an annual report of local government finances to the Department of Community Affairs. The report shall include the revenues, expenditures, assets, and debts of all funds and agencies of the local government, and other such information as may be reasonably requested by the department. Such annual report shall further identify the total amount of speeding fine revenue collected by the local government.

(B) Each unit of local government which levies a tax pursuant to Article 3 of Chapter 13 of Title 48 shall also submit a schedule of all revenues therefrom which are expended for the promotion of tourism, conventions, and trade shows or any other tourism related purpose which is specified under Code Section 48-13-51. Such schedule shall identify both the project or projects involved and the contracted entity involved in each such expenditure.

(2) Each local independent authority shall submit an annual report of indebtedness to the Department of Community Affairs. Such report shall include the revenues, expenditures, assets, and debts of all funds of the local independent authority and shall describe any

actions taken by such local independent authority to incur indebtedness.

(3) The local government finances report and the local independent authority indebtedness report shall be filed on forms promulgated by the department and shall be submitted within the requested time periods established by the department.

(c) The department shall have the authority to require local governments and local independent authorities to submit the reports as provided for in subsection (b) of this Code section as a condition of such local government or local independent authority receiving state appropriated funds from the department. Upon the receipt of the report of local government finance from a local government or the report of local independent authority debt from a local independent authority, the department is authorized to release any state appropriated grant funds that may be due at such time to the local government or the local independent authority.

(d) The department's implementation of subsections (b) and (c) of this Code section shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and the department is specifically directed to promulgate the forms provided for in subsection (b) of this Code section in the manner provided for promulgation of rules under Chapter 13 of Title 50.

(e) Utilizing information contained in audit reports of local governments filed with the state auditor, the report of county or municipal finances filed with the Department of Community Affairs, and other available state or federal information of public record, the Department of Community Affairs shall prepare annually a report on local government finances. Utilizing information contained in reports of indebtedness returned to the Department of Community Affairs, the Department of Community Affairs shall prepare annually a report on indebtedness of local independent authorities. The local government finances report shall be filed on January 15 of each year, beginning January 15, 1985, and the local independent authority indebtedness report shall be filed on January 15 of each year, beginning January 1, 1990, with the Governor, the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Ways and Means Committee, the chairman of the House State Planning and Community Affairs Committee, the chairman of the Senate Finance Committee, and the chairman of the Senate State and Local Governmental Operations Committee, as well as with the chief elected official or chief appointed official of each local unit of government and each local independent authority and member of the General Assembly upon request.

(f) The local government finances report and the local independent authority indebtedness report shall be organized, within the limits of

available resources, in such a manner as to allow for reasonable comparative analysis of local government revenues and expenditures and for reasonable comparative analysis of local independent authority debt.

(g) The department, in addition to its other duties, shall assist local units of government and local independent authorities in fulfilling the requirements of this article. The department shall coordinate its technical assistance efforts with the state auditor, the University System of Georgia, the Association County Commissioners of Georgia, the Georgia Municipal Association, and the Georgia Society of Certified Public Accountants and should coordinate with any other organizations interested and currently active in local government financial management so as to ensure that coordination of training and assistance is maintained. The department may contract or subcontract with other public or private agencies to provide assistance to local units of government or local independent authorities.

(h) The department, either in conjunction with the local government finances report or separately, shall prepare a community indicators report for each local unit of government having annual expenditures of $250,000.00 or more as indicated pursuant to the most recent Report of Local Government Finances. The community indicators report shall include data on local government services, administration, and community characteristics. The department shall have the authority to require local governments to submit reports on local government services and operations as a condition of such local government receiving state appropriated funds from the department. Such reports shall be obtained utilizing the local government finance survey as provided in subsection (b) of this Code section and the local government operations survey collected by the department. The department shall develop the community indicators report in cooperation with the Association County Commissioners of Georgia and the Georgia Municipal Association and shall prepare the report on or before December 31, 1998, and annually thereafter. (Ga. L. 1980, p. 1738, § 9; Ga. L. 1982, p. 3, § 36; Ga. L. 1984, p. 818, §§ 5, 6; Ga. L. 1986, p. 10, § 36; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1393, § 1; Ga. L. 1989, p. 908, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 1995, p. 10, § 36; Ga. L. 1997, p. 1575, § 3; Ga. L. 2004, p. 403, § 4; Ga. L. 2009, p. 303, § 11/HB 117; Ga. L. 2015, p. 1064, § 1/SB 134.)

The 2015 amendment, effective July 1, 2015, added the last sentence of subparagraph (b)(1)(A).

36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

(a) As used in this Code section, the term:

(1) "Subrecipient" means an entity that receives a grant of state funds from the Governor's emergency fund or from a special project appropriation through a local government and shall also mean an entity which in turn receives all or any portion of such grant funds from a subrecipient.

(2) "Unit of local government" means, for purposes of this Code section and notwithstanding paragraph (16) of Code Section 36-81-2, a:

(A) Municipality, county, consolidated government, county school district, independent school district, other political subdivision of the state, any public agency or authority of any of the foregoing, or any combination of any of the foregoing;

(B) Regional commission;

(C) Public authority created by local Act or local constitutional amendment of the General Assembly; or

(D) Public authority created by general law which applies to an area of less than the entire state and which requires activation by a county or municipal government.

(b) Each grant of state funds to a recipient unit of local government from the Governor's emergency fund or from a special project appropriation in an amount greater than $5,000.00 shall be conditioned upon the receipt by the state auditor of a properly completed grant certification form. The form shall be designed by the state auditor and shall be distributed with each covered grant as required by this Code section. The grant certification form shall require the certification by the recipient unit of local government and by the unit of local government auditor that the grant funds were used solely for the express purpose or purposes for which the grant was made. Such form shall be filed with the state auditor in conjunction with the annual audit required under Code Section 36-81-7 or 50-6-6 or any other applicable Code section for each year in which such grant funds are expended or remain unexpended by the unit of local government. A recipient unit of local government which is not otherwise subject to the annual audit requirements specified in this subsection shall file a grant certification form with the state auditor no later than December 31 of each year in which such grant funds are expended or remain unexpended. For grant funds to subrecipients, the certification by the unit of local government

auditor required by this subsection may also be made by an in-house or internal auditor of the unit of local government who meets the education requirements contained in subparagraph (b)(3)(A) of Code Section 43-3-9. The cost of performing any audit required by this subsection or paragraph (1) of subsection (d) of this Code section shall be an eligible expense of the grant. However, the amount charged shall not exceed 2 percent of the amount of the grant or $250.00 per required audit, whichever is less. The unit of local government to whom the grant is made may deduct the cost of any such audit from the funds disbursed to the subrecipient.

(c) Where the grant of state funds is for $5,000.00 or less, the grant shall require submission to the state auditor of a properly completed grant certification form as required by subsection (b) of this Code section except that only the unit of local government need certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. However, where such grant is to a subrecipient, the grant shall require submission to the unit of local government of a notarized affidavit executed by the executive director, president, chairperson, chief executive officer, or other responsible party representing the subrecipient, by whatever name or title, to whom the grant funds are disbursed. The affidavit shall certify under oath that the funds were used solely for the express purpose or purposes for which the grant was made. Such affidavit shall be submitted annually for each year that grant funds are expended or remain unexpended according to a schedule established by the unit of local government and shall be made on a form designed by the state auditor and distributed with each covered grant as required by this Code section.

(d)(1) Notwithstanding subsection (b) or (c) of this Code section, the Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require any recipient unit of local government to obtain or perform an audit of any grant of state funds from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(2) Notwithstanding subsection (b) or (c) of this Code section, a recipient unit of local government shall have the right or authority to obtain or perform an audit of any grant of state funds to a subrecipient from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(e) The failure to comply with the requirements of this Code section shall result in a forfeiture of a state grant and the return to the state of any such grant funds which have been received by the unit of local government. In the case of a state grant awarded to a subrecipient, the

subrecipient shall be responsible for the return to the state of any such grant funds if it is determined that the funds were not used for the express purpose or purposes for which the grant was made. A grant recipient or subrecipient shall be ineligible to receive funds from the Governor's emergency fund or from a special project appropriation until all unallowed expenditures are returned to the state, except that a recipient unit of local government shall not be ineligible for such funds where a subrecipient has not used funds it received for the express purpose or purposes for which the grant was made.

(f) No subrecipient shall be considered an agent of the unit of local government or be indemnified or held harmless by the unit of local government for any negligence, misfeasance, or malfeasance of the subrecipient, and a recipient unit of local government shall not be liable for any expenditure of state grant funds by a subrecipient. (Code 1981, § 36-81-8.1, enacted by Ga. L. 1998, p. 1611, § 5; Ga. L. 2003, p. 811, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2006, p. 718, § 1/SB 202; Ga. L. 2008, p. 181, § 16/HB 1216; Ga. L. 2014, p. 136, § 2-2/HB 291.)

The 2014 amendment, effective July 1, 2014, substituted "subparagraph (b)(3)(A) of Code Section 43-3-9" for "subparagraph (a)(3)(A) of Code Section 43-3-6" in the sixth sentence of subsection (b).

CHAPTER 82

BONDS

Article 1

General Provisions

ARTICLE 1

GENERAL PROVISIONS

36-82-1. Election for bonded debt; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

(a) When any county, municipal corporation, or political subdivision desires to incur any bonded debt, as permitted by the Constitution of Georgia, the election required shall be called and held in accordance with this Code section and Code Sections 36-82-2 through 36-82-4.

(b) The officers charged with levying taxes, contracting debts, and the like for the county, municipal corporation, or political subdivision shall give notice for not less than 30 days immediately preceding the day of the election in the newspaper in which sheriff's advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine the question of whether bonds shall be issued by the county, municipal corporation, or political subdivision. The notice shall specify the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which such bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds. The notice, in the discretion of the issuing body, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the election notice or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the election notice.

(b.1) Repealed.

(c) Nothing contained in this Code section shall be construed as prohibiting or restricting the right of the issuing body to sell bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in the election notice.

(d) Every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body of any county, municipality, or other political subdivision of this state or by any other person, firm, corporation, or association with the knowledge and consent of the governing body of such county, municipality, or other political subdivision of this state shall be deemed to be a statement of intention of the governing body of such county, municipality, or other political subdivision of this state concerning the use of the bond funds; and such statement of intention shall be binding on the governing body of such county, municipality, or other political subdivision of this state in the expenditure of any such bond funds or interest received from such bond funds which have been invested, unless the governing body of such county, municipality, or other political subdivision of this state uses such bond funds for the retirement of bonded indebtedness, in the manner provided for in this Code section; and such statement of intention shall be set forth in the resolution pursuant to which such bonds are issued. Bond funds and interest received from such bond funds which have been invested shall be expended in the manner in which advertised and for the purpose stated in such statement of intention. The governing body of such

county, municipality, or other political subdivision of this state may, by a two-thirds' vote, declare any project which has been established pursuant to any such statement of intention to be unnecessary. In that event, the governing body of such county, municipality, or other political subdivision of this state shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county, municipality, or other political subdivision of this state then outstanding. Surpluses from the overestimated projects, including interest received on bond funds of such projects, shall be used first to complete underestimated projects and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body of such county, municipality, or other political subdivision of this state may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(e)(1) It is expressly provided that any county, municipality, or other political subdivision of this state may provide for the refunding of all or any part of the outstanding bonded indebtedness of such county, municipality, or political subdivision without the necessity of a referendum therefor if the governing authority of such county, municipality, or political subdivision adopts a resolution or ordinance authorizing the issuance of general obligation refunding bonds for such purpose, provided the following conditions are met:

(A) The term of the refunding bonds shall not extend beyond the final maturity date of the bonds being refunded;

(B) The rate of interest borne by the refunding bonds shall not exceed the rate of interest borne by the bonds being refunded;

(C) The principal amount of the refunding bonds may only exceed the principal amount of the bonds being refunded to the extent necessary to effectuate a refund and to allow the reduction of the total principal and interest requirements over the remaining term of the bonds being refunded; and

(D) The proceeds derived from the sale of the refunding bonds, together with the earnings and increments derived therefrom, if any, will be sufficient to provide for the payment of the principal of, interest, and premium, if any, on the bonds being refunded and shall be deposited in an irrevocable trust fund created for that purpose.

(2) Such refunding bonds so authorized to be issued in compliance with the conditions set forth above, when issued, shall be construed

and deemed to be issued in lieu of such original debt being so refunded, and the original debt upon the creation of the irrevocable trust fund and the deposit of the requisite proceeds shall not constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia, but the refunding bonds shall constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia and shall count against the limitation on debt measured by the 10 percent of assessed value of taxable property as expressed therein.

(f) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, nothing contained in this Code section shall be construed so that a violation thereof shall affect the validity of any bonds issued under this Code section. (Ga. L. 1878-79, p. 40, § 1; Code 1882, § 508i; Civil Code 1895, § 377; Civil Code 1910, § 440; Code 1933, § 87-201; Ga. L. 1960, p. 1032, § 1; Ga. L. 1968, p. 1007, § 1; Ga. L. 1976, p. 1091, § 1; Ga. L. 1981, p. 1581, § 1; Ga. L. 1982, p. 2107, § 43; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1362, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 886, § 1; Ga. L. 1992, p. 2052, § 1; Ga. L. 1995, p. 355, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2014, p. 216, § 1/HB 834.)

The 2014 amendment, effective April 15, 2014, deleted former subsection (b.1), which read: "In all counties of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census, no county-wide bond election or school bond election in the unincorporated area of any such county shall be held on any date other than the date of the November general election; provided, however, that upon a determination by any superior court of competent jurisdiction that the holding of such election on the date of the November general election would cause irreparable harm to the electors of any such county, such election shall be held in the manner provided for in subsection (b) of this Code section."

ARTICLE 3

REVENUE BONDS

36-82-60. Short title.

JUDICIAL DECISIONS

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers' standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113 (2013).

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and

O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-82-61. Definitions.

JUDICIAL DECISIONS

Hotel/motel tax proceeds were revenue. — Hotel/motel tax funding agreement for a stadium project worked with a bond proceeds funding agreement to ensure that the stadium's tax proceeds were expended consistent with O.C.G.A. § 48-13-51(a)(5)(B), and there was no requirement that the development authority own the stadium for the tax proceeds to be considered as part of the revenue to pay for the bonds: under O.C.G.A. § 36-82-61(3), "revenue" included revenues arising out of or in connection with the operation or ownership of the stadium. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

36-82-66. Governmental liability for payment of bonds; recitation on bond.

JUDICIAL DECISIONS

Development authority not required to own or operate project. — Proposed bond transaction did not violate Ga. Const. 1983, Art. IX, Sec. VI, Para. I and O.C.G.A. § 36-82-66 of the Revenue Bond Law merely because the development authority would not own or operate the proposed stadium; the development authority could use bond proceeds for paying all or part of the cost of any project (O.C.G.A. § 36-62-6(a)(13)), not only those projects the authority developed, and the authority could pay the costs of another government entity's project pursuant to O.C.G.A. § 36-62-9. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

36-82-76. Notice of hearing on validation.

JUDICIAL DECISIONS

Notice sufficient. — Although a scrivener's error stated that the hearing would regard the validation of a bond issued by the county industrial building authority, because the notice made clear that it was meant to refer to a case involving the airport authority, not the industrial building authority, the notice of the bond validation hearing was sufficient as the record supported a finding of substantial compliance. Avery v. State of Ga., 295 Ga. 630, 761 S.E.2d 56 (2014).

36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.

JUDICIAL DECISIONS

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113 (2013).

Attorney who intervened in a bond validation proceeding pursuant to O.C.G.A. § 36-82-77(a) and then offered to withdraw the attorney's objections if the developers paid the attorney a substantial amount of money did not violate Ga. St. Bar R. 4-102(d):4.2(a) or Ga. St. Bar. R. 4-102(d):8.4(a)(4) because the attorney's conduct was not fraudulent; a party could intervene for ulterior and personal reasons and still have standing. In the Matter of Woodham, 296 Ga. 618, 769 S.E.2d 353 (2015).

Validity of agreement proper subject for superior court. — Superior court had authority to adjudicate the validity of a Hotel/Motel Tax Operation and Maintenance Agreement for a stadium project even though the agreement did not act as security for the bonds, based on the court's jurisdiction to hear and determine all questions of law and of fact in the bond validation case and render judgment on those issues, pursuant to O.C.G.A. § 36-82-77. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

Intervention in bond validation proceeding. — Challenger in an action validating and confirming taxable revenue bonds lacked standing to intervene in the action as a result of failing to comply with the intervention procedures set forth in O.C.G.A. § 9-11-24(c); and, because the challenger lacked standing to become a party in the trial court, the challenger also lacked standing to appeal the trial court's judgment, therefore, the appeal was dismissed. Sherman v. Dev. Auth., 324 Ga. App. 23, 749 S.E.2d 29 (2013).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and

was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., 317 Ga. App. 345, 730 S.E.2d 113 (2012).

36-82-78. Effect of judgment of validation.

JUDICIAL DECISIONS

Cited in Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-82-85. Construction of article generally; applicability of certain other provisions of law.

JUDICIAL DECISIONS

Cited in Sherman v. City of Atlanta, 317 Ga. 345, 730 S.E.2d 113 (2013).

CHAPTER 83

LOCAL GOVERNMENT INVESTMENT POOL

Sec.
36-83-8. Local government investment pool.

36-83-8. Local government investment pool.

(a) A local government investment pool is created, consisting of the aggregate of all funds from local governments and all funds from other bodies created for a public purpose which the State Depository Board has agreed to accept that are placed in the custody of the state for investment and reinvestment as provided in this chapter.

(b)(1) The investment policies for the local government investment pool shall be established by the State Depository Board.

(2) The state treasurer shall administer the local government investment pool on behalf of the participating local governments.

(3) The state treasurer shall develop such procedures consistent with the policies established pursuant to paragraph (1) of this subsection as he deems necessary for the efficient administration of the pool, including, but not limited to:

(A) Specification of minimum amounts which may be deposited in the pool and minimum periods of time for which deposits shall be retained in the pool;

(B) Payment of amounts equivalent to administrative expenses from the earnings of the pool;

(C) Distribution of the earnings in excess of such expenses or allocation of losses to the several participants, in a manner which equitably reflects the differing amount of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and

(D) Procedures for the deposit and withdrawal of funds.

(c) The state treasurer shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. Specifically, the types of authorized investments for pool assets shall be limited to those set forth in Code Section 50-5A-7 and Chapter 17 of Title 50.

(d)(1) The governing authority of any local government having funds which are available for investment and which are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its financial officer to remit such funds to the state treasurer for investment as part of the local government investment pool.

(2) Upon determination by the local governing authority that it is in the best interest of the local government to deposit funds in the investment pool, it shall adopt and file with the state treasurer a certified copy of a resolution or ordinance authorizing investment of its funds in the investment pool. The resolution or ordinance shall name the local government official or officials responsible for the deposit and withdrawal of such funds.

(3) The resolution or ordinance filed with the state treasurer shall be accompanied by a statement as to the approximate cash flow requirements of the local government for the invested funds. Subsequent deposits into the investment pool shall be accompanied by a statement as to the intended duration of the investment or the anticipated date of withdrawal of the funds from the pool.

(e) A separate account designated by name or number for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding

month shall be furnished to each participant having a beneficial interest in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.

(f) The principal and credited income of each account maintained for a participant in the investment pool shall be subject to payment from the pool at any time upon request, subject to the procedures developed in accordance with paragraph (3) of subsection (b) of this Code section. Accumulated income shall be credited to each participant account at least monthly.

(g) Except as provided in this Code section, all instruments of title of all investments of the investment pool shall remain in the custody of the state treasurer. The state treasurer may deposit with one or more fiscal agents or banks those instruments of title which he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income or of the proceeds of sale. The state treasurer shall collect the principal and interest or other income from investments of the investment pool the instruments of title to which are in his custody, when due and payable.

(h) In the event of default in the payment of the principal or interest or other income of any investment of the investment pool, the state treasurer may:

(1) Institute the proper proceedings to collect the matured principal or interest or other income;

(2) Accept for exchange purposes refunding bonds or other evidences of indebtedness, at interest rates to be agreed upon by the state treasurer and the obligor;

(3) Make compromises, adjustments, or disposition of the matured principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested; or

(4) Make compromises or adjustments as to future payments of principal or interest or other income, as the state treasurer considers advisable for the purpose of protecting the moneys invested.

(i) No payment may be issued upon any account in an amount greater than the sum total of the particular account to which it applies. If such payment is issued, the state treasurer shall be personally liable under his official bond for the entire overdraft resulting from the payment if made.

(j) Subject to the objectives and requirements of this Code section, the state treasurer shall formulate procedures for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

(k) Funds in the local government investment pool may be consolidated with state funds under the control of the state treasurer for investment purposes, if accurate and detailed accounting records are maintained for the funds of each participating local government and a proportionate amount of interest earned is credited to the local government investment pool and the accounts therein. The state treasurer may also place the funds in a separate trust fund to be administered by the state treasurer pursuant to policies established by the State Depository Board.

(l) Payments of amounts for administrative expenses shall be deemed contractually obligated funds held in trust for the benefit of the local government investment pool and shall not lapse. (Ga. L. 1980, p. 1715, § 8; Ga. L. 1986, p. 205, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 1474, § 4; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2015, p. 826, § 1/HB 95.)

The 2015 amendment, effective July 1, 2015, added the last sentence in subsection (k).

CHAPTER 87

PARTICIPATION IN FEDERAL PROGRAMS

Sec.
36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

(a) Each county and municipal corporation of the State of Georgia is authorized to participate in federal programs which provide federal grants and federal loans for such purposes including but not limited to housing, transportation, and water and waste-water treatment and distribution purposes. Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to exercise the following powers:

(1) To expend revenues, but shall not impose any new form of taxation; and

(2) To contract:

(A) With the United States and its departments and agencies;

(B) With the State of Georgia and its departments, agencies, and authorities;

(C) With regional commissions, political subdivisions of the state, and public authorities of such subdivisions; and

(D) With private nonprofit entities organized for the purpose of providing services to persons of low and moderate income when such entities are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986

when the exercise of such powers is necessary to comply with the conditions established by federal law and federal regulations for eligibility for participation in such federal programs.

(b)(1) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to expend public funds and participate in community development block grant programs and other federal programs to construct facilities to carry out the following purposes:

(A) Providing day-care services primarily to the children of persons of low and moderate income;

(B) Providing services to elderly persons;

(C) Providing health education, literacy and English language instruction, mental health and disability services, legal assistance, emergency food, and medical assistance to low and moderate income persons; and

(D) Any combination of services authorized in this paragraph.

(2) Counties and municipalities are further authorized to carry out the purposes of this subsection by contracting with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section.

(3) Any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to April 5, 1994, are validated and confirmed.

(c) State agencies rating applications from counties and municipal corporations for federal funding of the construction of child care learning centers shall, to the extent allowed under applicable federal laws or regulations, give priority to those child care learning centers located in or adjacent to industrial parks.

(d) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to:

(1) Participate in federal and state programs which provide funds for job training, job research assistance, and workforce development programs;

(2) Accept and expend grant funds subject to such terms as may be required by the grantor, including the duty to reimburse the grantor for any funds not expended in accordance with such terms;

(3) Contract with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section for the purpose of carrying out such programs; and

(4) Ratify any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to July 1, 1997. (Code 1981, § 36-87-2, enacted by Ga. L. 1993, p. 792, § 1; Ga. L. 1994, p. 822, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 696, § 1; Ga. L. 2005, p. 1484, § 1/HB 186; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 181, § 21/HB 1216; Ga. L. 2013, p. 135, § 9/HB 354.)

The 2013 amendment, effective July 1, 2013, in subsection (c), substituted "child care learning centers" for "day-care facilities" near the middle, and substituted "child care learning centers" for "day-care centers" near the end.

CHAPTER 91

PUBLIC WORKS BIDDING

Article 2

Contracting and Bidding Requirements

Article 3

Bonds

Part 1

General Provisions

Part 4

Payment Bonds

Article 5

Partnership for Public Facilities and Infrastructure

ARTICLE 1

GENERAL PROVISIONS

36-91-2. Definitions.

JUDICIAL DECISIONS

Public works construction. — Board of Regents of the University System of Georgia was immune from a suit by employees of a contractor who provided a forged payment bond to the Board; the maintenance contract was not for "public works construction" as defined in O.C.G.A. § 36-91-2(12); therefore, the provisions for payment bonds in O.C.G.A. § 13-10-60 et seq. did not apply. Further, the Board had no duty to investigate the information presented on the face of the payment bond. Bd. of Regents of the Univ. Sys. of Ga. v. Brooks, 324 Ga. App. 15, 749 S.E.2d 23 (2013).

Emergency sufficiently identified. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in its minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015).

ARTICLE 2

CONTRACTING AND BIDDING REQUIREMENTS

36-91-21. Competitive award requirements.

(a) It shall be unlawful to let out any public works construction contracts subject to the requirements of this chapter without complying with the competitive award requirements contained in this Code section. Any contractor who performs any work of the kind in any other manner and who knows that the public works construction contract was let out without complying with the notice and competitive award

requirements of this chapter shall not be entitled to receive any payment for such work.

(b) Any competitive sealed bidding process shall comply with the following requirements:

(1) The governmental entity shall publicly advertise an invitation for bids;

(2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

(3) The governmental entity shall open the bids publicly and evaluate such bids without discussions with the bidders; and

(4) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the public works construction contract, the governmental entity may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(c)(1) In making any competitive sealed proposal, a governmental entity shall:

(A) Publicly advertise a request for proposals, which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors;

(B) Open all proposals received at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiations; and

(C) Make an award to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is made. The contract file shall indicate the basis on which the award is made.

(2) As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals. Discussions, negotiations, and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the

governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations, and revisions. During the process of discussion, negotiation, and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(e) Before commencing the work, any person who procures such public work by bidding or proposal shall make an oath in writing that he or she has not directly or indirectly violated subsection (d) of this Code section. The oath shall be filed by the officer whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the governmental entity on the contract may be recovered by appropriate action.

(f)(1) Unless otherwise required by law, no governmental entity that contracts for public works construction shall in its bid documents, specifications, project agreements, or other controlling documents for a public works construction contract:

(A) Require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreements, or any other agreement with one or more labor organizations on the same or other related construction projects; or

(B) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors, or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations on the same or other related construction projects.

(2) Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or material suppliers from voluntarily

entering into agreements described in paragraph (1) of this subsection.

(3) The head of a governmental entity may exempt a particular public works construction contract from the requirements of any or all of the provisions of paragraph (1) of this subsection if the governmental entity finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstance under this paragraph shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the particular project who are not members of or affiliated with a labor organization.

(g) If any member of a governmental entity lets out any public works construction contract subject to the requirements of this article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

(h) No public works construction contract with a governing authority shall be valid for any purpose unless the contractor shall comply with all bonding requirements of this chapter. No such contract shall be valid if any governmental entity lets out any public works construction contract subject to the requirements of this chapter without complying with the requirements of this chapter. (Code 1981, § 36-91-21, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 5/SB 179.)

The 2013 amendment, effective May 6, 2013, added subsection (f) and redesignated former subsections (f) and (g) as present subsections (g) and (h), respectively.

36-91-22. Exceptions; use of inmate labor; emergency situations.

JUDICIAL DECISIONS

Payment bond not required. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015).

36-91-23. Disqualification of otherwise qualified bidder from bid or proposal or prequalification based upon lack of previous experience with job of that size prohibited; conditions.

In awarding contracts based upon sealed competitive bids or sealed competitive proposals, no responsible bidder shall be disqualified from a bid or proposal or denied prequalification based upon a lack of previous experience with a job of the size for which the bid or proposal is being sought if:

(1) The bid or proposal is not more than 30 percent greater in scope or cost from the responsible bidder's previous experience in jobs;

(2) The responsible bidder has experience in performing the work for which bids or proposals are sought; and

(3) The responsible bidder is capable of being bonded by a surety which meets the qualifications of the bid documents for a bid bond, a performance bond, and a payment bond as required for the scope of the work for which the bid or proposal is being sought. (Code 1981, § 36-91-23, enacted by Ga. L. 2013, p. 126, § 2/SB 168.)

Effective date. — This Code section became effective April 24, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

36-91-24. Liquidated damages and other incentive provisions for project completion.

Public works construction contracts may include both liquidated damages provisions for late construction project completion and incentive provisions for early construction project completion when the project schedule is deemed to have value. The terms of the liquidated damages provisions and the incentive provisions shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal. (Code 1981, § 36-91-24, enacted by Ga. L. 2013, p. 628, § 6/SB 179.)

Effective date. — This Code section became effective May 6, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

ARTICLE 3

BONDS

PART 1

GENERAL PROVISIONS

36-91-41. No bid bond required under certain circumstances.

When a governmental entity invites competitive sealed proposals for a public works construction project and the request for proposals for such project states that price or project cost will not be a selection or evaluation factor, no bid bond shall be required unless the governmental entity provides for a bid bond in the request for proposals and specifies the amount of such bond. (Code 1981, § 36-91-41, enacted by Ga. L. 2013, p. 628, § 7/SB 179.)

Effective date. — This Code section became effective May 6, 2013.

Editor's notes. — Former Code Section 36-91-41 was redesignated as Code Section 36-91-50 by Ga. L. 2001, p. 820, § 12, effective July 1, 2001.

PART 4

PAYMENT BONDS

36-91-90. Requirement for payment bonds.

JUDICIAL DECISIONS

Emergency exception. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015).

36-91-92. Notice of commencement.

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the contractor physically commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section

36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

(2) The name and location of the public work being constructed or a general description of the improvement;

(3) The name and address of the governmental entity that is contracting for the public works construction;

(4) The name and address of the surety for the performance and payment bonds, if any; and

(5) The name and address of the holder of the security deposit provided, if any.

(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (2) of subsection (a) of Code Section 36-91-93 inapplicable.

(c) The clerk of the superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the governmental entity and the name of the contractor as contained in the notice of commencement. (Code 1981, § 36-91-72, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-92, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 8/SB 179.)

The 2013 amendment, effective May 6, 2013, substituted "paragraph (2)" for "paragraph (1)" in the middle of subsection (b).

ARTICLE 5

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE

Editor's notes. — This article became effective May 5, 2015.

Ga. L. 2015, p. 406, § 1/SB 59, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Partnership for Public Facilities and Infrastructure Act.'"

36-91-110. Definitions.

As used in this article, the term:

(1) "Comprehensive agreement" means the written agreement between the private entity and the local government required by Code Section 36-91-115.

(2) "Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.

(3) "Local authority" means any local authority created pursuant to a local or general Act of the General Assembly, including a joint public instrumentality.

(4) "Local government" means any county, municipality, consolidated government, or board of education.

(5) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(6) "Qualifying project" means any project selected in response to a request from a local government or submitted by a private entity as an unsolicited proposal in accordance with this article and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need. This term shall not include and shall have no application to any project involving:

(A) The generation of electric energy for sale pursuant to Chapter 3 of Title 46;

(B) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46;

(C) Cable and video services pursuant to Chapter 76 of this title; or

(D) Water reservoir projects as defined in paragraph (10) of Code Section 12-5-471, which shall be governed by Article 4 of this chapter.

(7) "Revenue" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

(8) "Unsolicited proposal" means a written proposal for a qualifying project that is received by a local government and is not in response to any request for proposal for a qualifying project issued by a local government. (Code 1981, § 36-91-110, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-111. Creation of Partnership for Public Facilities and Infrastructure Act Guidelines Committee; membership; terms; allowances; duties; support.

(a) The Partnership for Public Facilities and Infrastructure Act Guidelines Committee is established to prepare model guidelines for local governments in the implementation of this article.

(b) The committee shall be composed of ten persons. Except for the local government officials or staff appointed to the committee, each committee member shall have subject matter expertise in architecture, construction management, engineering, finance, or real estate development. These appointments shall be made as follows:

(1) The following members shall be appointed by the Governor:

(A) One member or employee of a county governing authority;

(B) One member or employee of a municipal governing authority;

(C) One member or employee of a local board of education; and

(D) One licensed member of the State Bar of Georgia with expertise in representing local government in public works construction.

(2) The following members shall be appointed by the Speaker of the House of Representatives, provided that one of these appointees shall have expertise in working with local government:

(A) One member of the business community with expertise in construction management employed by a firm with less than $25 million in annual revenue;

(B) One member of the business community who is a licensed architect; and

(C) One member of the business community with expertise in real estate development; and

(3) The following members shall be appointed by the Lieutenant Governor, provided that one of these appointees shall have expertise in working with local government:

(A) One member of the business community with expertise in construction management employed by a firm with more than $25 million in annual revenue;

(B) One member of the business community who is a licensed professional engineer; and

(C) One member of the business community with expertise in finance.

(c) The terms of these committee appointments shall be for two years. At least three of these appointees shall reside outside of the metropolitan Atlanta area. The appointments shall be made as soon as feasible, but not later than August 1, 2015. The committee shall meet once a month or as needed and shall issue model guidelines to local governments no later than July 1, 2016. Such guidelines shall be updated every two years. The members of the committee shall elect a chairperson and a vice chairperson who shall serve for two-year terms in such office.

(d) Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees.

(e) Staff support shall be provided by the Department of Administrative Services, the Governor's office, and the Office of Planning and Budget. (Code 1981, § 36-91-111, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-112. Model guidelines.

(a) Prior to executing any comprehensive agreement for the development or operation of a qualifying project pursuant to an unsolicited proposal received by a local government under this article, the local government shall adopt either:

(1) The model guidelines from the Partnership for Public Facilities and Infrastructure Act Guidelines Committee; or

(2) Its own guidelines as a policy, rule, regulation, or ordinance, which shall contain each of the factors identified in subsection (b) of this Code section.

(b) The model guidelines shall include, at a minimum, the following:

(1) The period of time each calendar year when the local government will consider receiving, processing, reviewing, or evaluating unsolicited proposals for qualifying projects, and such limited time period shall be established within the sole discretion of the local government;

(2) Procedures for the financial review and analysis of an unsolicited proposal that may include:

(A) A cost-benefit analysis;

(B) Evaluation of the public need for or benefit derived from the qualifying project;

(C) Evaluation of the estimated cost of the qualifying project for reasonableness in relation to similar facilities;

(D) Evaluation of the source of funding for the project;

(E) Consideration of plans to ensure timely development or operation;

(F) Evaluation of risk sharing, including cost or completion guarantees, added value, or debt or equity investments by the private entity; and

(G) Consideration of any increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available;

(3) Criteria for determining any fees authorized in Code Section 36-91-113 that the local government elects to charge the private entity for the processing, review, and evaluation of an unsolicited proposal;

(4) A requirement for the issuance of a request for proposals upon a decision by the local government to proceed with a qualifying project pursuant to an unsolicited proposal;

(5) Procedures for posting and publishing notice of the opportunity to offer competing proposals;

(6) Procedures for the processing, review, and consideration of competing proposals, and the period for the processing, review, and consideration of competing proposals shall not be less than 90 days;

(7) Procedures for determining whether information included in an unsolicited proposal shall be released as part of any request for proposals to ensure fair competition; and

(8) Procedures for identifying and appointing an independent owner adviser to the local government with expertise in architecture, engineering, or construction management to assist in the evaluation of an unsolicited proposal and to serve as owner adviser to the local government if the local government chooses to pursue any ensuing solicited bid process. The local government shall not be obligated to engage such services. (Code 1981, § 36-91-112, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-113. Unsolicited proposals.

(a) If a local government adopts a rule, regulation, or ordinance affirming its participation in the process created in this article, a private entity may submit an unsolicited proposal for a project to the local government for review and determination as a qualifying project

in accordance with the guidelines established by the local government. Any such unsolicited proposal shall be accompanied by the following material and information:

(1) A project description, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technology infrastructure;

(2) A feasibility statement that includes:

(A) The method by which the private entity proposes to secure any necessary property interests required for the project;

(B) A list of all permits and approvals required for the project from local, state, or federal agencies; and

(C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

(3) A schedule for the initiation and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both the local government and private entity as well as a proposed schedule for obtaining the permits and approvals required in subparagraph (B) of paragraph (2) of this subsection;

(4) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to Code Section 36-91-115; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

(5) A business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;

(6) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal; and

(7) Such additional material and information as the local government may reasonably request.

(b) For any unsolicited proposal of the development of a project received by a local government, the local government may charge and retain a reasonable fee to cover the costs of processing, reviewing, and evaluating the unsolicited proposal, including, without limitation,

reasonable attorney's fees and fees for financial, technical, and other necessary advisers or consultants.

(c) The local government may reject any proposal or unsolicited proposal at any time and shall not be required to provide a reason for its denial. If the local government rejects a proposal or unsolicited proposal submitted by a private entity, it shall have no obligation to return the proposal, unsolicited proposal, or any related materials following such rejection.

(d) A private entity assumes all risk in submission of a proposal or unsolicited proposal in accordance with subsections (a) and (b) of this Code section, and a local government shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project. (Code 1981, § 36-91-113, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-114. Approval process.

(a) The local government may approve the project in an unsolicited proposal submitted by a private entity pursuant to Code Section 36-91-113 as a qualifying project. Determination by the local government of a qualifying project shall not bind the local government or the private entity to proceed with the qualifying project.

(b) Upon the local government's determination of a qualifying project as provided in subsection (a) of this Code section, the local government shall:

(1) Seek competing proposals for the qualifying project by issuing a request for proposals for not less than 90 days; and

(2) Review all proposals submitted in response to the request for proposals based on the criteria established in the request for proposals.

(c) When the time for receiving proposals expires, the local government shall first rank the proposals in accordance with the factors set forth in the request for proposal or invitation for bids. The local government shall not be required to select the proposal with the lowest price offer, but it may consider price as one of various factors in evaluating the proposals received in response to the request for proposals for a qualifying project. Factors that may be considered include:

(1) The proposed cost of the qualifying project;

(2) The general reputation, industry experience, and financial capacity of the private entity;

(3) The proposed design of the qualifying project;

(4) The eligibility of the facility for accelerated selection, review, and documentation timelines under the local government's guidelines;

(5) Benefits to the public;

(6) The private entity's compliance with a minority business enterprise participation plan;

(7) The private entity's plans to employ local contractors and residents; and

(8) Other criteria that the local government deems appropriate.

(d) After ranking the proposals, the local government shall begin negotiations with the first ranked private entity. If the local government and the first ranked private entity do not reach a comprehensive agreement or interim agreement, then the local government may conduct negotiations with the next ranked private entity. This process shall continue until the local government either voluntarily abandons the process or executes a comprehensive agreement or interim agreement with a private entity.

(e) At any time during the process outlined in this Code section but before the full execution of a comprehensive agreement, the local government may, without liability to any private entity or third party, cancel its request for proposals or reject all proposals received in response to its request for proposals, including the unsolicited proposal, for any reason whatsoever.

(f) Nothing in this article shall enlarge, diminish, or affect the authority, if any, otherwise possessed by the local government to take action that would impact the debt capacity of the State of Georgia or any local government. The credit of this state shall not be pledged or loaned to any private entity. The local government shall not loan money to the private entity in order to finance all or a portion of the qualifying project. A multiyear lease entered into by a local government which is not terminable at the end of each fiscal year during the term of the lease shall be considered a debt of the local government which enters into such lease, and such lease shall apply against the debt limitations of the local government. (Code 1981, § 36-91-114, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-115. Comprehensive agreement.

(a) The comprehensive agreement entered into between the local government and the private entity selected in accordance with this article shall include:

(1) A thorough description of the duties of each party in the completion and operation of the qualifying project;

(2) Dates and schedules for the completion of the qualifying project;

(3) Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;

(4) Any reimbursements to be paid to the local government for services provided by the local government;

(5) A process for the review of plans and specifications for the qualifying project by the local government and approval by the local government if the plans and specifications conform to reasonable standards acceptable to the local government;

(6) A process for the periodic and final inspection of the qualifying project by the local government to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;

(7) Delivery of performance and payment bonds in the amounts required in Code Sections 36-91-70 and 36-91-90 and in a form acceptable to the local government for those components of the qualifying project that involve construction, and surety bonds, letters of credit, or other forms of security acceptable to the local government for other phases and components of the development of the qualifying project;

(8) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the local government accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the local government and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

(9) A process for monitoring the practices of the private entity by the local government to ensure that the qualifying project is properly maintained;

(10) The filing of appropriate financial statements to the local government on a periodic basis; and

(11) Provisions governing the rights and responsibilities of the local government and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the local

government and the transfer or purchase of property or other interests of the private entity by the local government, including provisions compliant with state constitutional limitations on public debt by the local government. Such policies and procedures shall be consistent with Code Section 36-91-116.

(b) The comprehensive agreement may include such other terms and conditions that the local government determines will serve the public purpose of this article and to which the private entity and the local government mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this article shall cease and the qualifying project is dedicated to the local government for public use.

(c) Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(d) The comprehensive agreement may provide for the development of phases or segments of the qualifying project. (Code 1981, § 36-91-115, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-116. Default and remedies.

(a) In the event of a material default by the private entity, the local government may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by Code Section 36-91-115.

(b) The local government may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project subject to statutory limitations on the availability of future appropriated or otherwise unobligated funds.

(c) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this article. Any local government having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.

(d) In the event the local government elects to take over a qualifying project pursuant to subsection (b) of this Code section, the local government may develop the qualifying project, impose user fees, and

impose and collect lease payments for the use thereof. (Code 1981, § 36-91-116, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-117. Powers.

All power or authority granted by this article to public entities shall be in addition and supplemental to, and not in substitution for, the powers conferred by any other general, special, or local law. The limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law and shall apply only to the extent that a local government elects to proceed under this article. (Code 1981, § 36-91-117, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-118. Sovereign or official immunity.

Nothing in this article shall be construed as or deemed a waiver of the sovereign or official immunity of any local government or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. (Code 1981, § 36-91-118, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

36-91-119. Article inapplicable to local government procurement via competitive sealed bidding; article inapplicable to certain transportation projects; public meeting requirements.

(a) Local governments that proceed with procurement pursuant to competitive sealed bidding as defined in Code Section 36-91-2, or any other purchasing options available under current law, shall not be required to comply with this article.

(b) Nothing in this article shall apply to or affect the State Transportation Board, the Department of Transportation, or the State Road and Tollway Authority, or any project thereof.

(c) Nothing in this article shall abrogate the obligations of a local government or private entity to comply with the public meetings requirement in accordance with Chapter 14 of Title 50 or to disclose public information in accordance with Article 4 of Chapter 18 of Title 50. (Code 1981, § 36-91-119, enacted by Ga. L. 2015, p. 406, § 2/SB 59.)

CHAPTER 92

WAIVER OF IMMUNITY FOR MOTOR VEHICLE CLAIMS

36-92-1. Definitions.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

Motor vehicle. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361 (2012).

School district waived immunity to extent of insurance covering school bus accident. — In a parent's action against a school district for the death of the parent's child as the child tried to board a school bus, although the district had sovereign immunity, the district waived sovereign immunity to the extent of the district's purchase of liability insurance pursuant to O.C.G.A. § 33-24-51(b); the exclusion from the waiver of sovereign immunity for school districts in O.C.G.A. § 36-92-2(a) did not extend to the second sentence of § 33-24-51(b). Tift County Sch. Dist. v. Martinez, 331 Ga. App. 423, 771 S.E.2d 117 (2015).

Cited in City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320 (2015).

36-92-2. Maximum waiver amount; exceptions; liability; recovery of interest.

JUDICIAL DECISIONS

Sovereign immunity not waived.

Bus driver failed to show that the waiver of sovereign immunity under O.C.G.A. § 36-92-2(a) for the negligent use of motor vehicles applied to the driver's claims for wrongful discharge, false arrest, and malicious prosecution because the school district's alleged liability for those claims was not predicated upon the school district's negligent use of a motor vehicle. Bomia v. Ben Hill County Sch. Dist., 320 Ga. App. 423, 740 S.E.2d 185 (2013).

Waiver of immunity. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by § 33-24-51(b), and the

Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361 (2012).

School district waived immunity to extent of insurance covering school bus accident. — In a parent's action against a school district for the death of the parent's child as the child tried to board a school bus, although the district had sovereign immunity, the district waived sovereign immunity to the extent of the district's purchase of liability insurance pursuant to O.C.G.A. § 33-24-51(b); the exclusion from the waiver of sovereign immunity for school districts in O.C.G.A. § 36-92-2(a) did not extend to the second sentence of § 33-24-51(b). Tift County Sch. Dist. v. Martinez, 331 Ga. App. 423, 771 S.E.2d 117 (2015).

Cited in Primas v. City of Milledgeville, 296 Ga. 584, 769 S.E.2d 326 (2015).

36-92-3. No employee liability; parties to litigation; evidence; bar to further recovery.

JUDICIAL DECISIONS

Claim against police officer barred. Trial court properly concluded that O.C.G.A. § 36-92-3 barred the driver and the driver's wife from recovering against the officer in the officer's official capacity and, thus, properly dismissed the officer from the case. Ray v. City of Griffin, 318 Ga. App. 426, 736 S.E.2d 110 (2012).

Cited in Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857 (2014).